

Federal Financial Institutions Examination Council

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other person having custody of records of the ASC, who is required to respond to a subpoena or other legal process, shall attend at the time and place therein specified and respectfully de-

cline to produce any such record or give any testimony with respect thereto, basing such refusal on this section.

[64 FR 72501, Dec. 28, 1999]

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

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SUBCHAPTER A—ORGANIZATION AND OPERATIONS

PART 1202—FREEDOM OF INFORMATION ACT

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SOURCE: 74 FR 2342, Jan. 15, 2009, unless otherwise noted.

§ 1202.1 Why did FHFA issue this part?

(a) The Freedom of Information Act (FOIA) (5 U.S.C. 552), is a federal law that requires the Federal Housing Finance Agency (FHFA) and other government agencies to disclose records to the public.

(b) This part explains the rules that FHFA follows when processing and responding to requests for records under the FOIA. It also explains what you must do to request records from FHFA under the FOIA. You should read this part together with the FOIA, which explains in more detail your rights and the records FHFA may release to you.

(c) If you want to request information about yourself under the Privacy Act (5 U.S.C. 552a), you should file your request using FHFA's Privacy Act regulations at part 1204 of this Title. If you file a FOIA request for information about yourself, FHFA will process it as

a request under the separate Privacy Act rules.

(d) FHFA may make public information that it routinely publishes or discloses when performing its activities without following these procedures.

§ 1202.2 What do the terms in this part mean?

Some of the terms you need to understand while reading the regulations in this part are—

Appeals Officer or *FOIA Appeals Officer* means a person designated by the Director of the Federal Housing Finance Agency (FHFA) to process appeals of denials of requests for FHFA records under the FOIA.

Confidential commercial information means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

Days, unless stated as “calendar days,” are working days and do not include Saturdays, Sundays, and federal holidays. If the last day of any period prescribed herein falls on a Saturday, Sunday, or federal holiday, the last day of the period will be the next working day that is not a Saturday, Sunday, or federal holiday.

Direct costs means the expenses, including for contract services, incurred by FHFA in search time, or reviewing and duplicating records to respond to a request for information. In the case of a commercial use request, the term also means those expenditures FHFA actually incurs in reviewing records to respond to the request. Direct costs include the cost of the time of the employee performing the work, the cost of any computer searches, and the cost of operating duplication equipment. Direct costs do not include overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

Employee, for the purposes of this part, means any person holding an appointment to a position of employment

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with FHFA or any person who formerly held such an appointment; any conservator appointed by FHFA; or any agent or independent contractor acting on behalf of FHFA, even though the appointment or contract has terminated.

FHFA means the Federal Housing Finance Agency and includes its predecessor agencies, the Office of Federal Housing Enterprise Oversight (OFHEO) and, the Federal Housing Finance Board (FHFB). FHFA is an agency responsible for the regulation or supervision of financial institutions.

FOIA Officer and *Chief FOIA Officer* are persons designated by the Director of FHFA to process and respond to requests for FHFA records under the FOIA. The mailing address for the FOIA Officer or the Chief FOIA Officer is FHFA, 1700 G Street, NW., Washington, DC 20552.

Readily reproducible means that the requested record or records exist in electronic format and can be downloaded or transferred intact to a computer disk, tape, or other electronic medium with equipment and software currently in use by FHFA.

Record means information or documentary material FHFA maintains in any form or format, including electronic, which FHFA—

(1) Created or received under federal law or in connection with the transaction of public business;

(2) Preserved or determined is appropriate for preservation as evidence of FHFA's operations or activities or because of the value of the information it contains; and

(3) Controls at the time it receives a request for disclosure.

Regulated entities means the Federal Home Loan Mortgage Corporation ("Freddie Mac"), the Federal National Mortgage Association ("Fannie Mae"), any Federal Home Loan Bank and/or any affiliate thereof that is subject to the regulatory authority of FHFA.

Requester means any person seeking access to FHFA records under the FOIA.

Search time means the amount of time spent by or on behalf of FHFA in attempting to locate records responsive to a request, manually, or by electronic means, including page-by-page or line-by-line identification of respon-

sive material within a record or extraction of electronic information from electronic storage media.

Submitter means any person or entity providing confidential information to the government. The term submitter includes, but is not limited to corporations, state governments, and foreign governments.

Unusual circumstances means the need to—

(1) Search for and collect records from agencies, offices, facilities, or locations that are separate from the office processing the request;

(2) Search, review, and duplicate a voluminous amount of separate and distinct records in order to process a single request; or

(3) Consult with another agency or among two or more components of FHFA that have a substantial interest in the determination of a request.

§ 1202.3 What information can I obtain through FOIA?

(a) *General.* FHFA generally follows a policy prohibiting employees from releasing or disclosing confidential or otherwise non-public information that FHFA possesses, except as authorized by this part or by the Director of FHFA, when the disclosure is necessary for the performance of official duties

(b) *Records.* You may request that FHFA disclose to you its records on a subject of interest to you. The FOIA only requires the disclosure of records. It does not require FHFA to create compilations of information or to provide narrative responses to questions or queries. Some information is exempt from disclosure.

(c) *Reading rooms.* (1) FHFA maintains electronic and physical reading rooms. The physical reading room is located at 1700 G Street, NW., Fourth Floor, Washington, DC 20552, and is open to the public by appointment from 9 a.m. to 3 p.m. each business day. For an appointment, contact the FOIA Officer by calling 202-414-6425 or by e-mail at foia@fhfa.gov. The electronic reading room is part of the FHFA Web site at <http://www.fhfa.gov>.

(2) Each reading room has the following records created by FHFA or its predecessor agencies after November 1,

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1996, and current indices to all of the following records created by FHFA or its predecessor agencies before or after November 1, 1996:

- (i) Final opinions or orders issued in adjudication;
- (ii) Statements of policy and interpretation that are not published in the FEDERAL REGISTER;
- (iii) Administrative staff manuals and instructions to staff that affect a member of the public, and are not exempt from disclosure under FOIA; and
- (iv) Copies of records released under FOIA that FHFA determines have become or are likely to become the subject of subsequent requests for substantially the same records.

[74 FR 2342, Jan. 15, 2009, as amended at 74 FR 18624, Apr. 24, 2009]

§ 1202.4 What information is exempt from disclosure?

(a) *General.* Unless the Director of FHFA, his or her designee, any FHFA regulation, or a statute specifically authorizes disclosure, FHFA will not release records of matters that are—

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, and is in fact properly classified pursuant to such Executive order.

(2) Related solely to FHFA's internal personnel rules and practices.

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that such statute—

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(5) Contained in inter-agency or intra-agency memoranda or letters that would not be available by law to a private party in litigation with FHFA.

(6) Contained in personnel, medical or similar files (including financial files) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution or an entity that is regulated and examined by FHFA that furnished information on a confidential basis, and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Contained in or related to examination, operating, or condition reports that are prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) *Discretion To Apply Exemptions.* Although records or parts of them may be exempt from disclosure, FHFA may elect under the circumstances of any particular request not to apply an exemption. This election does not generally waive the exemption and it does not have precedential effect. FHFA may still apply the exemption to any other records or portions of records, regardless of when the request is received.

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(c) *Redacted Portion.* If a requested record contains exempt information and information that can be disclosed and the portions can reasonably be segregated from each other, the portion of the record that can be disclosed will be released to the requester after FHFA deletes the exempt portions. If it is technically feasible, FHFA will indicate the amount of the information deleted at the place in the record where the deletion is made and include a notation identifying the exemption that was applied, unless including that indication would harm an interest protected by an exemption.

(d) *Exempt and Redacted Material.* FHFA is not required to provide an itemized index correlating each withheld document (or redacted portion) with a specific exemption justification.

(e) *Disclosure to Congress.* This section does not allow FHFA to withhold any information from, or to prohibit the disclosure of any information to, the Congress or any congressional committee or subcommittee.

§ 1202.5 How do I request information from FHFA under FOIA?

(a) *Where To Send Your Request.* FOIA requests must be in writing. You may make a request for FHFA records by writing directly to the FOIA Office through electronic mail, regular mail, or fax. The electronic mail address is: foia@fhfa.gov. The regular mail address is: FOIA Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552. The fax number is: (202) 414-8917. You can help FHFA process your request by marking electronic mail, letter, or fax and the subject line, envelope, or fax cover sheet "FOIA Request." You may find the FHFA's "Freedom of Information Act Reference Guides," available electronically on the FHFA's Web site, <http://www.fhfa.gov>, helpful in making your request.

(b) *Provide Your Name and Address.* Your request must include your full name, your address and, if different, the address at which FHFA is to notify you about your request; a telephone number at which you can be reached during normal business hours, and an electronic mail address, if any.

(c) *Request Is Under FOIA.* Your request must have a statement identifying it as being made under FOIA.

(d) *Your FOIA Status.* If you are submitting your request as a "commercial use" requester, an "educational institution" requester, a "non-commercial scientific institution" requester, or a "representative of the news media" for the purposes of the fee provisions of FOIA, your request must include a statement specifically identifying your status.

(e) *Describing the Records You Request.* You must describe the records that you seek in enough detail to enable FHFA personnel to locate them with a reasonable amount of effort. Your request should include as much specific information as possible that you know about each record you request, such as the date, title or name, author, recipient, subject matter, and file designations or descriptions of the record.

(f) *How You Want the Records Produced to You.* Your request must tell FHFA whether you will inspect the records before duplication or want them duplicated and furnished without inspection.

(g) *Agreement To Pay Fees.* Your FOIA request is an agreement by you to pay all applicable fees charged under section 1202.11, up to \$100.00, unless you seek a fee waiver. When making a request, you may specify a higher or lower amount you will pay without consultation. Your inability to pay a fee does not justify granting a fee waiver.

(h) *Valid Requests.* FHFA will only process valid requests. A valid request must meet all the requirements of this section.

§ 1202.6 What if my request does not have all the information FHFA requires?

If the FHFA determines that your request does not reasonably describe the records you seek, is overly broad, or otherwise lacks required information, we will inform you in writing to explain why your request is incomplete or insufficient and give you 30 calendar days to modify your request to meet all the requirements. The first request for additional information tolls the 20

days period for FHFA to respond to your request under § 1202.7.

(a) If you respond with an amended request, FHFA will process the amended request as a new request.

(b) If you do not respond or provide additional information within the time allowed, or if the additional information you provide is still incomplete or insufficient, FHFA will consider the request withdrawn.

(c) If the additional information you are required to provide concerns fees that may be incurred or an agreement to pay fees, FHFA may toll the 20 days response time under section 1202.7, as often as necessary to obtain the additional information.

§ 1202.7 How will FHFA respond to my FOIA request?

(a) *Authority to Grant or Deny Requests.* The FOIA Officer and the Chief FOIA Officer are authorized to grant or deny any request for FHFA records.

(b) *Multi-Track Request Processing.* FHFA uses a multi-track system to process FOIA requests. This means that FOIA requests are processed based on their complexity. When FHFA receives your request, it is assigned to a Standard Track or Complex Track. FHFA will notify you if your request is assigned to the Complex Track as described in paragraph (e) of this section for extensions of time.

(1) *Standard Track.* FHFA assigns FOIA requests that are routine and require little or no search time, review, or analysis to the Standard Track. We respond to these requests within 20 days after receipt, in the order in which they are received. If FHFA determines while processing your Standard Track request, that it is more appropriately a Complex Track request, we will reassign it to the Complex Track and notify you as described in paragraph (e) of this section for extensions of time.

(2) *Complex Track.* FHFA assigns requests that are not routine to the Complex Track. Complex Track requests are those to which FHFA determines that that response will be voluminous, involve two or more FHFA units, require consultation with other agencies or entities, require searches of archived documents; or when FHFA determines

that the request seeks confidential commercial information as described in section 1202.8, or will require an unusually high level of effort to search for, review and or duplicate records, or will cause undue disruption to the day-to-day activities of FHFA regulating and supervising the regulated entities. FHFA will respond to Complex Track requests as soon as reasonably possible, regardless of the date of receipt.

(c) *Referrals to Other Agencies.* When FHFA receives a request seeking records that originated in another Federal Government agency, FHFA refers the request to the other agency for response. FHFA will notify you if your request is referred to another agency.

(d) *Responses to FOIA Requests.* FHFA will respond to your request by granting or denying it in full, or by granting and denying it in parts. FHFA's response will be in writing. In determining which records are responsive to your request, we ordinarily will include only records we possess as of the date the request.

(1) *Requests That FHFA Grants.* If FHFA grants your request in full, the response will include the requested records or details about how FHFA will provide them to you, and the amount of any fees charged.

(2) *Requests That FHFA Denies or Grants and Denies in Parts.* If FHFA denies your request in full or grants and denies separate parts of it, the response will be signed by the official responding. If we deny your request in whole or in part because a requested record does not exist or cannot be located, is not readily reproducible in the form or format you sought, is not subject to the FOIA, or is exempt from disclosure, the written response will include the requested records, if any, the amount of any fees charged, the reasons for any denial, and a notice and description of your right to file an administrative appeal under section 1202.9.

(e) *Format and Delivery of Disclosed Records.* If FHFA grants, in whole or in part, your request for disclosure of records under FOIA, we will make the records available to you in the form or format you requested, if it is readily reproducible in that form or format. We will send them to the address you provided by regular U.S. Mail or by

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electronic mail unless we agree with you on alternate arrangements, such as your agreement to pay express or expedited delivery service fees or to pick up records at our office.

(f) *Extensions of Time.* In unusual circumstances, FHFA may extend the time limit in paragraph (b) of this section for no more than ten (10) days and notify you of—

- (1) The reason for the extension;
- (2) The date on which the determination in accordance with paragraph (b) of this section is expected; and
- (3) The opportunity to limit the scope of the request so that the FHFA may process it on the simple track, or arrange an alternative time period for processing the request or a modified request.

§ 1202.8 If the records I request contain confidential commercial information, what procedures will FHFA follow?

(a) *General.* FHFA will not disclose confidential commercial information in response to your FOIA request except as described in this section.

(b) *Designation of Confidential Commercial Information.* Submitters of commercial information should use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of the information they deem to be protected under 5 U.S.C. 552(b)(4) and section 1202.4(a)(4). Any such designation expired ten (10) years after they were submitted to the Government, unless the submitter requests, and provides reasonable justification for, a designation period of longer duration.

(c) *Predisclosure Notification.* Except as provided in paragraph (e) of this section, if your FOIA request encompasses confidential commercial information, FHFA will, prior to disclosure of the information and to the extent permitted by law, provide prompt written notice to a submitter that confidential commercial information was requested when—

- (1) The submitter has in good faith designated the information as confidential commercial information protected from disclosure under 5 U.S.C. 552(b)(4) and section 1202.4(a)(4); or

- (2) FHFA has reason to believe that the request seeks confidential commercial information, the disclosure of which may result in substantial competitive harm to the submitter.

(d) *Content of Predisclosure Notification.* When FHFA sends a predisclosure notification to a submitter, it will contain—

- (1) A description of the exact nature of the confidential commercial information requested or copies of the records or portions thereof containing the confidential business information; and

- (2) An opportunity to object to disclosure within ten (10) days by providing to FHFA a detailed written statement demonstrating all reasons the submitter opposes disclosure.

(e) *Exceptions to Predisclosure Notification.* FHFA is not required to send a predisclosure notification if—

- (1) FHFA determines that information should not be disclosed;

- (2) The information lawfully has been published or has been officially made available to the public;

- (3) Disclosure of the information is required by law, other than the FOIA;

- (4) The information requested is not designated by the submitter as confidential commercial information pursuant to this section; or

- (5) The designation made by the submitter, under paragraph (b) of this section, appears obviously frivolous; except that, FHFA will provide the submitter with written notice of any final decision to disclose the designated confidential commercial information within a reasonable number of days prior to a specified disclosure date.

(f) *Submitter's Objection to Disclosure.* A submitter may object to disclosure within ten (10) days after date of the Predisclosure Notification, or such other time period that FHFA may allow, by delivering to FHFA a statement demonstrating all grounds on which it opposes disclosure, and all reasons supporting its contention that the information should not be disclosed. The submitter's objection must contain a certification by the submitter, or an officer or authorized representative of the submitter, that the grounds and reasons presented are true

and correct to the best of the submitter's knowledge. The submitter's objection may itself be subject to disclosure under the FOIA.

(g) *Notice of Intent to Disclose Information.* FHFA will consider carefully all grounds and reasons provided by a submitter objecting to disclosure. If FHFA decides to disclose confidential commercial information over the objection of the submitter, it will provide to the submitter, at least ten (10) days before the date of disclosure, written notice containing—

(1) A statement of the reasons for not sustaining the submitter's objections to disclosure;

(2) A description of the confidential commercial information to be disclosed; and

(3) A specified disclosure date.

(h) *Notice to Requester.* FHFA will give a requester whose request encompasses confidential commercial information the following notices—

(1) At the time a Predisclosure Notification is provided to the submitter, written notice that the request encompasses confidential commercial information that may be exempt from disclosure under 5 U.S.C. 552(b)(4) and section 1202.4(a)(4) and that the submitter of the information has been given the opportunity to comment on the proposed disclosure of the information; and

(2) At the time a Notice of Intent to Disclose is provided to the submitter, a copy of the Notice of Intent to Disclose, at least days before the specified disclosure date.

(i) *Notice of FOIA Lawsuit.* FHFA will promptly notify the submitter whenever a requester files suit seeking to compel disclosure of the submitter's confidential commercial information.

§ 1202.9 How do I Appeal a Response Denying my FOIA Request?

(a) *Right of Appeal.* If FHFA denied your request in whole or in part, you may appeal the denial to: FOIA Appeals Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington DC 20552. If you use a mail, express, or courier delivery service to file your appeal, include a clear marking identifying it as a "FOIA APPEAL." You may file your appeal electroni-

cally by sending it to: foia@fhfa.gov with "FOIA Appeal" in the subject line. You may file an appeal by facsimile addressed to the attention of the FOIA Appeals Officer at (202) 414-6504, clearly identifying on the cover sheet that it is a "FOIA Appeal."

(b) *Timing, Form, Content and Receipt of an Appeal.* Your appeal must be written and submitted within 30 calendar days after you received FHFA's response denying your request. Your appeal must include a copy of the initial request, a copy of the letter denying the request in whole or in part, and a statement of the circumstances, reasons, or arguments you believe support disclosure of the requested record. FHFA will not consider an improperly addressed appeal to have been received for the purposes of the 20 days time period of paragraph (d) of this section, until it is actually received by the Appeals Officer, or would have been received by the Appeals Officer if due diligence were exercised.

(c) *Extensions of Time To Appeal.* If you need more time to file your appeal, you may request an extension of time of no more than ten (10) days in which to file your appeal, but only if your request is made within the original 30 calendar days time period for filing the appeal. The FOIA Appeals Officer has discretion to grant extensions of time to file appeals.

(d) *Final Action on Appeal.* FHFA's determination on your appeal will be in writing, signed by the FOIA Appeals Officer, and mailed within 20 days after the appeal is received or by the last day of the last extension under paragraph (e) of this section. The determination of an appeal is the final action of FHFA on a FOIA request. A determination—

(1) Affirming in whole or in part the denial of a request and including a brief statement of the reason or reasons for affirmance, including each FOIA exemption relied on.

(2) Reversing the denial of a request in whole or in part, requiring the request to be processed promptly in accordance with the determination.

(3) Remanding a request to the FOIA Officer for re-processing, stating the time limits for responding to the remanded request.

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(e) *Notice of Delayed Determinations on Appeal.* If FHFA cannot mail a determination on your appeal within the time limit, the Appeals Officer will continue to process the appeal and upon expiration of the time limit, will inform you the reason for the delay and the date on which a determination may be expected to be mailed. In this notice of delay, the FOIA Appeals Officer may request that you forebear seeking judicial review until a final determination of the appeal.

(f) *Judicial Review.* If the denial of your request for records is upheld in whole or in part, or if a determination on the appeal has not been mailed at the end of the 20 days period in paragraph (d) of this section, or the last extension thereof, you may seek judicial review under 5 U.S.C. 552(a)(4).

§ 1202.10 Will FHFA expedite my request or appeal?

(a) *Applications for Expedited Processing.* You may apply for expedited processing of an initial request or of an appeal. Your application must be in writing. FHFA will grant expedited processing, and give the request or appeal priority if your application demonstrates a compelling need for expedited processing by showing—

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(2) An urgency to inform the public about an actual or alleged Federal government activity if you are a person primarily engaged in disseminating information;

(3) The loss of substantial due process or rights;

(4) A matter of widespread and exceptional media interest in which there exists possible questions about the government's integrity, affecting public confidence; or

(5) Humanitarian need.

(b) *Certification of Compelling Need.* Your application for expedited processing must include a statement certifying that the reasons you present to demonstrate a compelling need are true and correct to the best of your knowledge.

(c) *Determination on Application.* FHFA will notify you within ten (10) days of receipt of your application whether expedited processing has been granted. If your application is denied, you may appeal under section 1202.9.

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(a) *Assessment of Fees, Generally.* FHFA will assess you for fees covering the direct costs of responding to your request and costs for duplicating records, except as otherwise provided in a statute with respect to the determination of fees that may be assessed for disclosure, search time, or review of particular records.

(b) *Assessment of Fees, Categories of Requesters.* The fees that FHFA may assess vary depending on the type of request or the type of requester you are—

(1) *Commercial Use.* If you request records for a commercial use, the fees that FHFA may assess are limited to FHFA's operating costs incurred in search time, and/or to review and duplicate records.

(2) *Educational Institution, Non-commercial Scientific Institution, Representative of the News Media.* If you are not requesting records for commercial use and you are an educational institution, a noncommercial scientific institution or a representative of the news media, the fees that FHFA may assess are limited to FHFA's costs incurred for duplication in excess of 100 pages, or an electronic equivalent of 100 pages.

(3) *Other.* If neither paragraph (b)(1) nor paragraph (b)(2) of this section applies, the fees FHFA may assess you are limited to the costs FHFA incurs in search time and review in excess of two hours and to duplicate in excess of 100 pages, or an electronic equivalent of 100 pages.

(c) *Fee Schedule.* FHFA will maintain a current schedule of fees on its Web site at: <http://www.fhfa.gov>.

(d) *Notice of Anticipated Fees in Excess of \$100.00.* When FHFA determines or estimates that the fees chargeable to you will exceed \$100.00, FHFA will notify you of the actual or estimated amount of fees you will incur, unless you earlier indicated your willingness

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to pay fees as high as those anticipated. When you are notified that the actual or estimated fees exceed \$100.00, your FOIA request will not be considered received by FHFA until you agree to pay the anticipated total fee.

(e) *Advance Payment of Fees.* FHFA may request that you pay estimated fees or a deposit in advance of responding to your request. If FHFA requests advance payment or a deposit, your request will not be considered received by FHFA until the advance payment or deposit is received. FHFA will request advance payment or a deposit only if—

(1) The fees are likely to exceed \$500.00. If it appears that the fees will exceed \$500.00, FHFA will notify you of the likely cost and obtain satisfactory assurance of full payment if you have a history of prompt payment of FOIA fees to FHFA. If you do not have a history of payment, or if the estimate of fees exceeds \$1,000.00, FHFA may require an advance payment of fees in an amount up to the full estimated charge that will be incurred; or

(2) You previously failed to pay a fee to FHFA in a timely fashion, *i.e.*, within 30 calendar days of the date of a billing. FHFA may require you to make advance payment of the full amount of the fees anticipated before processing a new request or finishing processing of a pending request. If you have an outstanding balance due from a prior request, FHFA may require you to pay the full amount owed plus any applicable interest, as provided in paragraph (f) of this section, or demonstrate that the fee owed has been paid, as well as payment of the full amount of anticipated fees before processing your request.

(f) *Interest.* FHFA may charge you interest on an unpaid bill starting on the 31st calendar day following the day on which the bill was sent. Once a fee payment has been received by FHFA, even if not processed, FHFA will stay the accrual of interest. Interest charges shall be assessed at the rate prescribed by 31 U.S.C. 3717 and shall accrue from the date of the billing.

(g) *FHFA Assistance To Reduce Costs.* If FHFA notifies you of estimated fees exceeding \$100.00 or requests advance payment or a deposit, you will have an opportunity to consult with FHFA

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staff to modify or reformulate your request to meet your needs at a lower cost.

§ 1202.12 Is there anything else I need to know about FOIA procedures?

These FOIA regulations in this part do not and shall not be construed to create any right or to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under FOIA. This part only provides procedures for requesting records under FOIA.

PART 1204—PRIVACY ACT IMPLEMENTATION

Sec.

1204.1 Why did FHFA issue this part?

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AUTHORITY: 5 U.S.C. 552a.

SOURCE: 74 FR 33908, July 14, 2009, unless otherwise noted.

§ 1204.1 Why did FHFA issue this part?

FHFA issued this part to:

(a) Implement the Privacy Act of 1974, 5 U.S.C. 552a, as amended (Privacy Act), a Federal law that helps protect private information about individuals that Federal agencies collect or maintain. You should read this part together with the Privacy Act, which provides additional information about records maintained on individuals;

(b) Establish rules that apply to all FHFA maintained systems of records retrieved by an individual's name or other personal identifier;

(c) Describe procedures through which you may request access to records, request amendment or correction of those records, and request an

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accounting of disclosures of those records by FHFA;

(d) Inform you, that when it is appropriate to do so, FHFA automatically processes a Privacy Act request for access to records under both the Privacy Act and the FOIA, following the rules contained in this part and part 1202 of this subchapter so you will receive the maximum amount of information available to you by law; and

(e) Notify you that this regulation does not entitle you to any service or to the disclosure of any record to which you are not entitled under the Privacy Act. It also does not, and may not be relied upon to create any substantive or procedural right or benefit enforceable against FHFA.

§ 1204.2 What do the terms in this part mean?

The following definitions apply to the terms used in this part—

Access means making a record available to a subject individual.

Amendment means any correction of, addition to, or deletion from a record.

Court means any entity conducting a legal proceeding.

FHFA means the Federal Housing Finance Agency.

FHFB means the Federal Housing Finance Board.

FOIA means the Freedom of Information Act, as amended (5 U.S.C. 552).

Individual means a natural person who is either a citizen of the United States of America or an alien lawfully admitted for permanent residence.

Maintain includes collect, use, disseminate, or control.

OFHEO means the Office of Federal Housing Enterprise Oversight.

Privacy Act means the Privacy Act of 1974, as amended (5 U.S.C. 552a).

Privacy Act Appeals Officer means the FHFA employee who has been delegated the authority to determine Privacy Act appeals.

Privacy Act Officer means the FHFA employee who has primary responsibility for privacy and data protection policy and is authorized to determine Privacy Act requests.

Record means any item, collection, or grouping of information about an individual that FHFA maintains within a system of records, including, but not

limited to, the individual's name, an identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or photograph.

Routine use means the purposes for which records and information contained in a system of records may be disclosed by FHFA without the consent of the subject of the record. Routine uses for records are identified in each System of Records Notice. Routine use does not include disclosure that subsection (b) of the Privacy Act (5 U.S.C. 552a(b)) otherwise permits.

Senior Agency Official for Privacy means the FHFA employee delegated the authority and responsibility to oversee and supervise the FHFA privacy program and implementation of the Privacy Act.

System of records means a group of records FHFA maintains or controls from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Single records or groups of records that are not retrieved by a personal identifier are not part of a system of records.

§ 1204.3 How do I make a Privacy Act request?

(a) *What is a valid request?* In general, a Privacy Act request can be made on your own behalf for records or information about you. You can make a Privacy Act request on behalf of another individual as the parent or guardian of a minor or as the guardian of someone determined by a court to be incompetent. You also may request access to another individual's record or information if you have that individual's written consent, unless other conditions of disclosure apply (5 U.S.C. 552a(b)(1) through (12)).

(b) *How and where do I make a request?* Your request must be in writing. You may appear in person to submit your written request to the Privacy Act Officer, or send your written request to the Privacy Act Officer by electronic mail, regular mail, or fax. The electronic mail address is: privacy@fhfa.gov. The regular mail address is: Privacy Act Officer, Federal Housing Finance Agency, 1625 Eye

Street, NW., Washington, DC 20006. The fax number is: (202) 408-2530. For the quickest possible handling, you should mark your electronic mail, letter, or fax and the subject line, envelope, or fax cover sheet “Privacy Act Request.”

(c) *What must the request include?* You must describe the record that you want in enough detail to enable the Privacy Act Officer to locate the system of records containing it with a reasonable amount of effort. Your request should include specific information about each record sought, such as the time period in which you believe it was compiled, the name or identifying number of each system of records in which you believe it is kept, and the date, title or name, author, recipient, and subject matter of the record. As a general rule, the more specific you are about the record that you want, the more likely FHFA will be able to locate it in response to your request.

(d) *How do I request amendment or correction of a record?* If you are requesting an amendment or correction of any FHFA record, you should identify each particular record in question and the systems of records in which the record is located, describe the amendment or correction that you want, and state why you believe that the record is not accurate, relevant, timely, or complete. You may submit any documentation that you think would be helpful, including an annotated copy of the record.

(e) *How do I request for an accounting of disclosures?* If you are requesting an accounting of disclosures by FHFA of a record to another person, organization, or Federal agency, you should identify each particular record in question. An accounting generally includes the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or Federal agency to which the disclosure was made.

(f) *Must I verify my identity?* When making requests under the Privacy Act, your request must verify your identity to protect your privacy or the privacy of the individual on whose behalf you are acting. If you make a Privacy Act request and you do not follow these identity verification procedures, FHFA cannot process your request.

(1) *How do I verify my identity?* To verify your identity, you must state your full name, current address, and date and place of birth. In order to help identify and locate the records you request, you also may, at your option, include your Social Security number. If you make your request in person and your identity is not known to the Privacy Act Officer, you must provide either two forms of identification with photographs, or one form of identification with a photograph and a properly authenticated birth certificate. If you make your request by mail, your signature either must be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. You may fulfill this requirement by having your signature on your request letter witnessed by a notary or by including the following statement just before the signature on your request letter: “I declare under penalty of perjury that the foregoing is true and correct. Executed on [date].”

(2) *How do I verify parentage or guardianship?* If you make a Privacy Act request as the parent or guardian of a minor or as the guardian of someone determined by a court to be incompetent, with respect to records or information about that individual, you must establish:

(i) The identity of the individual who is the subject of the record, by stating the individual’s name, current address, date and place of birth, and, at your option, the Social Security number of the individual;

(ii) Your own identity, as required in paragraph (f)(1) of this section;

(iii) That you are the parent or guardian of the individual, which you may prove by providing a properly authenticated copy of the individual’s birth certificate showing your parentage or a properly authenticated court order establishing your guardianship; and

(iv) That you are acting on behalf of the individual in making the request.

§ 1204.4 How will FHFA respond to my Privacy Act request?

(a) *How will FHFA locate the requested records?* FHFA will search to determine

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if requested records exist in the systems of records it owns or controls. You can find descriptions of FHFA systems of records on its Web site at <http://www.fhfa.gov>, or by linking to <http://www.ofheo.gov> and <http://www.fhfb.gov>, as appropriate. You can also find descriptions of OFHEO and FHFB systems of records that have not been superseded on the FHFA Web site. A description of the systems of records also is available in the "Privacy Act Issuances" compilation published by the Office of the Federal Register of the National Archives and Records Administration. You can access the "Privacy Act Issuances" compilation in most large reference and university libraries or electronically at the Government Printing Office Web site at: <http://www.gpoaccess.gov/privacyact/index.html>. You also can request a copy of FHFA systems of records from the Privacy Act Officer.

(b) *How long does FHFA have to respond?* The Privacy Act Officer generally will respond to your request in writing within 20 business days after receiving it, if it meets the requirements of §1204.3. FHFA may extend the response time in unusual circumstances, such as when consultation is needed with another Federal agency (if that agency is subject to the Privacy Act) about a record or to retrieve a record shipped offsite for storage. If you submit your written request in person, the Privacy Act Officer may disclose records or information to you directly with a written record made of the grant of the request. If you are to be accompanied by another person when accessing your record or any information pertaining to you, FHFA may require your written authorization before permitting access or discussing the record in the presence of the other person.

(c) *What will the FHFA response include?* The written response will include a determination to grant or deny your request in whole or in part, a brief explanation of the reasons for the determination, and the amount of the fee charged, if any, under §1204.6. If you are granted a request to access a record, FHFA will make the record available to you. If you are granted a request to amend or correct a record,

the response will describe any amendments or corrections made and advise you of your right to obtain a copy of the amended or corrected record.

(d) *What is an adverse determination?* An adverse determination is a determination on a Privacy Act request that:

(1) Withholds any requested record in whole or in part;

(2) Denies a request for an amendment or correction of a record in whole or in part;

(3) Declines to provide a requested accounting of disclosures;

(4) Advises that a requested record does not exist or cannot be located;

(5) Finds what has been requested is not a record subject to the Privacy Act; or

(6) Addresses any disputed fee matter.

(e) *What will be stated in a response that includes an adverse determination?* If the Privacy Act Officer makes an adverse determination with respect to your request, the written response under this section will state that the Privacy Act Officer is the person responsible for the adverse determination, that the adverse determination is not a final action of FHFA, and that you may appeal the adverse determination under §1204.5.

§ 1204.5 What if I am dissatisfied with the FHFA response to my Privacy Act request?

(a) *May I appeal the response?* You may appeal any adverse determination made by the Privacy Act Officer in response to your Privacy Act request. If you wish to seek review by a court of any adverse determination or denial of a request, you first must appeal it under this section.

(b) *How do I appeal the response?* (1) You may appeal by submitting a written appeal stating the reasons you believe the adverse determination should be overturned. FHFA must receive your written appeal within 30 business days of the date of the Privacy Act Officer's determination under §1204.4. Your written appeal may include as much or as little related information as you wish, as long as it clearly identifies the determination (including the

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request number, if known) that you are appealing.

(2) You should transmit your written appeal addressed to the Privacy Act Appeals Officer by electronic mail, regular mail, or fax. The electronic mail address is: *privacy@fhfa.gov*. The regular mail address is: Privacy Act Appeals Officer, Federal Housing Finance Agency, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. The fax number is: (202) 414-6504. For the quickest possible handling, you should mark your electronic mail, letter, or fax and the subject line, envelope, or fax cover sheet “Privacy Act Appeal.” FHFA ordinarily will not act on an appeal if the Privacy Act request becomes a matter of Privacy Act litigation.

(c) *Who has the authority to grant or deny appeals?* The Privacy Act Appeals Officer is authorized to act on behalf of the Director on all appeals under this section.

(d) *When will FHFA respond to my appeal?* FHFA generally will respond to you in writing within 30 business days of receipt of an appeal that meets the requirements of paragraph (b) of this section, unless for good cause shown, the Director extends the response time.

(e) *What will the FHFA response include?* The written response will include the determination of the Privacy Act Appeals Officer; whether to grant or deny your appeal in whole or in part, a brief explanation of the reasons for the determination, and information about the Privacy Act provisions for court review of the determination.

(1) If your appeal concerns a request for access to records or information and the appeal determination grants your access, the records or information, if any, will be made available to you.

(2)(i) If your appeal concerns an amendment or correction of a record and the appeal determination grants your request for an amendment or correction, the response will describe any amendment or correction made to the record and advise you of your right to obtain a copy of the amended or corrected record under this part. FHFA will notify all persons, organizations, or Federal agencies to which it previously disclosed the record, if an ac-

counting of that disclosure was made, that the record has been amended or corrected. Whenever the record is subsequently disclosed, the record will be disclosed as amended or corrected.

(ii) If the response to your appeal denies your request for an amendment or correction to a record, the response will advise you of your right to file a Statement of Disagreement under paragraph (f) of this section.

(f) *What is a Statement of Disagreement?* (1) A Statement of Disagreement is a concise written statement in which you clearly identify each part of any record that you dispute and explain your reason(s) for disagreeing with the Privacy Act Appeals Officer’s denial in whole or in part of your appeal requesting amendment or correction. Your Statement of Disagreement must be received by the Privacy Act Officer within 30 business days of the Privacy Act Appeals Officer’s denial in whole or in part of your appeal concerning amendment or correction of a record. FHFA will place your Statement of Disagreement in the system(s) of records in which the disputed record is maintained. FHFA also may append a concise statement of its reason(s) for denying the request for an amendment or correction of the record.

(2) FHFA will notify all persons, organizations, or Federal agencies to which it previously disclosed the disputed record, if an accounting of that disclosure was made, that the record is disputed and provide your Statement of Disagreement and the FHFA concise statement, if any. Whenever the disputed record is subsequently disclosed, a copy of your Statement of Disagreement and the FHFA concise statement, if any, will also be disclosed.

§ 1204.6 What does it cost to get records under the Privacy Act?

(a) *Must I agree to pay fees?* Your Privacy Act request is your agreement to pay all applicable fees, unless you specify a limit on the amount of fees you agree to pay. FHFA will not exceed the specified limit without your written agreement.

(b) *How does FHFA calculate fees?* FHFA will charge a fee for duplication of a record under the Privacy Act in the same way it charges for duplication

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of records under FOIA (5 U.S.C. 552) in 12 CFR 1202.11. There are no fees to search for or review records.

§ 1204.7 Are there any exemptions from the Privacy Act?

(a) *What is a Privacy Act exemption?* The Privacy Act allows the Director to exempt records or information in a system of records from some of the Privacy Act requirements, if the Director determines that the exemption is necessary.

(b) *How do I know if the records or information I want are exempt?* (1) Each notice of a system of records will advise you if the Director has determined records or information in records are exempt from Privacy Act requirements. If the Director has claimed an exemption for a system of records, the System of Records Notice will identify the exemption and the provisions of the Privacy Act from which the system is exempt.

(2) Until superseded by FHFA Systems of Records, the following OFHEO and FHFB Systems of Records are, under 5 U.S.C. 552a(k)(2) or (k)(5), exempt from the Privacy Act requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f):

- (i) OFHEO-11 Litigation and Enforcement Information System;
- (ii) FHFB-5 Agency Personnel Investigative Records; and
- (iii) FHFB-6 Office of Inspector General Audit and Investigative Records.

§ 1204.8 How are records secured?

(a) *What controls must FHFA have in place?* Each FHFA office must establish administrative and physical controls to prevent unauthorized access to its systems of records, unauthorized or inadvertent disclosure of records, and physical damage to or destruction of records. The stringency of these controls should correspond to the sensitivity of the records that the controls protect. At a minimum, the administrative and physical controls must ensure that:

- (1) Records are protected from public view;
- (2) The area in which records are kept is supervised during business hours to prevent unauthorized persons from having access to them;

(3) Records are inaccessible to unauthorized persons outside of business hours; and

(4) Records are not disclosed to unauthorized persons or under unauthorized circumstances in either oral or written form.

(b) *Is access to records restricted?* Access to records is restricted only to authorized employees who require access in order to perform their official duties.

§ 1204.9 Does FHFA collect and use Social Security numbers?

FHFA collects Social Security numbers only when it is necessary and authorized. At least annually, the Privacy Act Officer or the Senior Agency Official for Privacy will inform employees who are authorized to collect information that:

(a) Individuals may not be denied any right, benefit, or privilege as a result of refusing to provide their Social Security numbers, unless the collection is authorized either by a statute or by a regulation issued prior to 1975; and

(b) They must inform individuals who are asked to provide their Social Security numbers:

- (1) If providing a Social Security number is mandatory or voluntary;
- (2) If any statutory or regulatory authority authorizes collection of a Social Security number; and
- (3) The uses that will be made of the Social Security number.

§ 1204.10 What are FHFA employee responsibilities under the Privacy Act?

At least annually, the Privacy Act Officer or the Senior Agency Official for Privacy will inform employees about the provisions of the Privacy Act, including the Privacy Act's civil liability and criminal penalty provisions. Unless otherwise permitted by law, an authorized FHFA employee shall:

(a) Collect from individuals only information that is relevant and necessary to discharge FHFA responsibilities;

(b) Collect information about an individual directly from that individual whenever practicable;

(c) Inform each individual from whom information is collected of:

(1) The legal authority to collect the information and whether providing it is mandatory or voluntary;

(2) The principal purpose for which FHFA intends to use the information;

(3) The routine uses FHFA may make of the information; and

(4) The effects on the individual, if any, of not providing the information.

(d) Ensure that the employee's office does not maintain a system of records without public notice and notify appropriate officials of the existence or development of any system of records that is not the subject of a current or planned public notice.

(e) Maintain all records that are used in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in the determination.

(f) Except for disclosures made under the FOIA, make reasonable efforts, prior to disseminating any record about an individual, to ensure that the record is accurate, relevant, timely, and complete.

(g) When required by the Privacy Act, maintain an accounting in the specified form of all disclosures of records by FHFA to persons, organizations, or Federal agencies.

(h) Maintain and use records with care to prevent the unauthorized or inadvertent disclosure of a record to anyone.

(i) Notify the appropriate official of any record that contains information that the Privacy Act does not permit FHFA to maintain.

PART 1206—ASSESSMENTS

Sec.

- 1206.1 Purpose.
- 1206.2 Definitions.
- 1206.3 Annual assessments.
- 1206.4 Increased costs of regulation.
- 1206.5 Working capital fund.
- 1206.6 Notice and review.
- 1206.7 Delinquent payment.
- 1206.8 Enforcement of payment.

AUTHORITY: 12 U.S.C. 4516.

SOURCE: 73 FR 56713, Sept. 30, 2008, unless otherwise noted.

§ 1206.1 Purpose.

This part sets forth the policy and procedures of the FHFA with respect to the establishment and collection of the assessments of the Regulated Entities under 12 U.S.C. 4516.

§ 1206.2 Definitions.

As used in this part:

Act means the Federal Housing Finance Regulatory Reform Act of 2008.

Adequately capitalized means the adequately capitalized capital classification under 12 U.S.C. 1364 and related regulations.

Director means the Director of the Federal Housing Finance Agency or his or her designee.

Enterprise means the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and “Enterprises” means, collectively, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

Federal Home Loan Bank, or *Bank*, means a Federal Home Loan Bank established under section 12 of the Federal Home Loan Bank Act (12 U.S.C. 1432).

FHFA means the Federal Housing Finance Agency.

Minimum required regulatory capital means the highest amount of capital necessary for a Bank to comply with any of the capital requirements established by the Director and applicable to it.

Regulated Entity means the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or any of the Federal Home Loan Banks.

Surplus funds means any amounts that are not obligated as of September 30 of the fiscal year for which the assessment was made.

Total exposure means the sum, as of the most recent June quarterly minimum capital report of the Enterprise, of the amounts of the following assets and off-balance sheet obligations that are used to calculate the quarterly minimum capital requirement of the Enterprise under 12 CFR part 1750:

- (1) On-balance sheet assets;
- (2) Guaranteed mortgage-backed securities; and

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(3) Other off-balance sheet obligations as determined by the Director.

Working capital fund means an account for amounts collected from the Regulated Entities to establish an operating reserve that is intended to provide for the payment of large or multiyear capital and operating expenditures, as well as unanticipated expenses.

§ 1206.3 Annual assessments.

(a) *Establishing assessments.* The Director shall establish annual assessments on the Regulated Entities in an amount sufficient to maintain a working capital fund and provide for the payment of the FHFA's costs and expenses, including, but not limited to:

(1) Expenses of any examinations under 12 U.S.C. 4517 and section 20 of the Federal Home Loan Bank Act (12 U.S.C. 1440);

(2) Expenses of obtaining any reviews and credit assessments under 12 U.S.C. 4519;

(3) Expenses of any enforcement activities under 12 U.S.C. 3645;

(4) Expenses of other FHFA litigation under 12 U.S.C. 4513;

(5) Expenses relating to the maintenance of the FHFA records relating to examinations and other reviews of the Regulated Entities;

(6) Such amounts in excess of actual expenses for any given year deemed necessary to maintain a working capital fund;

(7) Expenses relating to monitoring and ensuring compliance with housing goals;

(8) Expenses relating to conducting reviews of new products;

(9) Expenses related to affordable housing and community programs;

(10) Other administrative expenses of the FHFA;

(11) Expenses related to preparing reports and studies;

(12) Expenses relating to the collection of data and development of systems to calculate the House Price Index (HPI) and the conforming loan limit;

(13) Amounts deemed necessary by the Director to wind up the affairs of the Office of Federal Housing Enterprise Oversight and the Federal Housing Finance Board; and

(14) Expenses relating to other responsibilities of the FHFA under the Safety and Soundness Act, the Federal Home Loan Bank Act and the Act.

(b) *Allocating assessments.* The Director shall allocate the annual assessments as follows:

(1) *Enterprises.* Assessments collected from the Enterprises shall not exceed amounts sufficient to provide for payment of the costs and expenses relating to the Enterprises as determined by the Director. Each Enterprise shall pay a proportional share that bears the same ratio to the total portion of the annual assessment allocated to the Enterprises that the total exposure of each Enterprise bears to the total exposure of both Enterprises.

(2) *Federal Home Loan Banks.* Assessments collected from the Banks shall not exceed amounts sufficient to provide for payment of the costs and expenses relating to the Banks as determined by the Director. Each Bank shall pay a *pro rata* share of the annual assessments based on the ratio between its minimum required regulatory capital and the aggregate minimum required regulatory capital of every Bank.

(c) *Timing and amount of semiannual payment.* Each Regulated Entity shall pay on or before October 1 and April 1 an amount equal to one-half of its annual assessment.

(d) *Surplus funds.* Surplus funds shall be credited to the annual assessment by reducing the amount collected in the following semiannual period by the amount of the surplus funds. Surplus funds shall be allocated to all Regulated Entities in the same proportion in which they were collected, except as determined by the Director.

§ 1206.4 Increased costs of regulation.

(a) *Increase for inadequate capitalization.* The Director may, at his or her discretion, increase the amount of a semiannual payment allocated to a Regulated Entity that is not classified as adequately capitalized to pay additional estimated costs of regulation of that Regulated Entity.

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(b) *Increase for enforcement activities.* The Director may, at his or her discretion, adjust the amount of a semiannual payment allocated to a Regulated Entity to ensure that the Regulated Entity bears the estimated costs of enforcement activities under the Act related to that Regulated Entity.

(c) *Additional assessment for deficiencies.* At any time, the Director may make and collect from any Regulated Entity an assessment, payable immediately or through increased semiannual payments, to cover the estimated amount of any deficiency for the semiannual period as a result of increased costs of regulation of a Regulated Entity due to its classification as other than adequately capitalized, or as a result of enforcement activities related to that Regulated Entity. Any amount remaining from such additional assessment and the semiannual payments at the end of any semiannual period during which such an additional assessment is made shall be deducted *pro rata* (based upon the amount of the additional assessments) from the assessment for the following semiannual period for that Regulated Entity.

§ 1206.5 Working capital fund.

(a) *Assessments.* The Director shall establish and collect from the Regulated Entities such assessments he or she deems necessary to maintain a working capital fund.

(b) *Purposes.* Assessments collected to maintain the working capital fund shall be used to establish an operating reserve and to provide for the payment of large or multiyear capital and operating expenditures as well as unanticipated expenses.

(c) *Remittance of excess assessed funds.* At the end of each year for which an assessment under this section is made, the Director shall remit to each Regulated Entity any amount of assessed and collected funds in excess of the amount the Director deems necessary to maintain a working capital fund in the same proportions as paid under the most recent annual assessment.

§ 1206.6 Notice and review.

(a) *Written notice of budget.* The Director shall provide to each Regulated Entity written notice of the projected

budget for the Agency for the upcoming fiscal year. Such notice shall be provided at least 30 days before the beginning of the applicable fiscal year.

(b) *Written notice of assessments.* The Director shall provide each Regulated Entity with written notice of assessments as follows:

(1) *Annual assessments.* The Director shall provide each Regulated Entity with written notice of the annual assessment and the semiannual payments to be collected under this part. Notice of the annual assessment and semiannual payments shall be provided before the start of the new fiscal year.

(2) *Immediate assessments.* The Director shall provide each Regulated Entity with written notice of any immediate assessments to be collected under § 1206.4 of this chapter. Notice of any immediate assessment and the required payments shall be provided at such reasonable time as determined by the Director.

(3) *Changes to assessments.* The Director shall provide each Regulated Entity with written notice of any changes in the assessment procedures that the Director, in his or her sole discretion, deems necessary under the circumstances.

(c) *Request for review.* At the written request of a Regulated Entity, the Director, in his or her discretion, may review the calculation of the proportional share of the annual assessment, the semiannual payments, and any partial payments to be collected under this part. The determination of the Director upon such review is final. Except as provided by the Director, review by the Director does not suspend the requirement that the Regulated Entity make the semiannual payment or partial payment on or before the date it is due. Any adjustments determined appropriate shall be credited or otherwise addressed by the following year's assessment for that entity.

§ 1206.7 Delinquent payment.

The Director may assess interest and penalties on any delinquent semiannual payment or other payment assessed under this part in accordance with 31 U.S.C. 3717 (interest and penalty on claims) and part 1704 of this title (debt collection).

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§ 1206.8 Enforcement of payment.

The Director may enforce the payment of any assessment under 12 U.S.C. 4631 (cease-and-desist proceedings), 12 U.S.C. 4632 (temporary cease-and-desist orders), and 12 U.S.C. 4626 (civil money penalties).

PART 1212—POST-EMPLOYMENT RESTRICTION FOR SENIOR EXAMINERS

Subpart A [Reserved]

Subpart B—Post-Employment Restriction for Senior Examiners

Sec.

1212.1 Purpose and scope.

1212.2 Definitions.

1212.3 Post-employment restriction for senior examiners.

1212.4 Waiver.

1212.5 Penalties.

AUTHORITY: 12 U.S.C. 4526, 12 U.S.C. 4517(e).

SOURCE: 74 FR 51075, Oct. 5, 2009, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Post-Employment Restriction for Senior Examiners

§ 1212.1 Purpose and scope.

This subpart sets forth a one-year post-employment restriction applicable to senior examiners of the Federal Housing Finance Agency (FHFA). This restriction is in addition to the post-employment restriction applicable to employees of FHFA under 12 U.S.C. 4523.

§ 1212.2 Definitions.

For purposes of subpart B of this part, the term:

Consultant means a person who works directly on matters for, or on behalf of, a regulated entity or the Office of Finance.

Director means the Director of FHFA or his or her designee.

Employee means an officer or employee of FHFA, including a special Government employee.

Federal Home Loan Bank or *Bank* means a Bank established under the Federal Home Loan Bank Act; the

term “Federal Home Loan Banks” means, collectively, all the Federal Home Loan Banks.

Office of Finance means the Office of Finance of the Federal Home Loan Bank System, or any successor thereto.

Regulated entity means the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, any Federal Home Loan Bank; the term “regulated entities” means, collectively, the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, and the Federal Home Loan Banks.

Safety and Soundness Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Federal Housing Finance Regulatory Reform Act of 2008, Division A of the Housing and Economic Recovery Act of 2008, Public Law No. 110-289, 122 Stat. 2654 (2008).

Senior examiner means an employee of FHFA who has been:

(1) Authorized by FHFA to conduct examinations or inspections on behalf of FHFA;

(2) Assigned continuing, broad and lead responsibility for examining a regulated entity or the Office of Finance; and

(3) Assigned responsibilities for examining, inspecting and supervising the regulated entity or the Office of Finance that—

(i) Represents a substantial portion of the employee’s assigned responsibilities; and

(ii) Requires the employee to interact routinely with officers or employees of the regulated entity or the Office of Finance.

§ 1212.3 Post-employment restriction for senior examiners.

(a) *Prohibition.* An employee of FHFA who serves as the senior examiner of a regulated entity or the Office of Finance for two or more months during the last 12 months of his or her employment with FHFA may not, within one year after leaving the employment of FHFA, knowingly accept compensation as an employee, officer, director,

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or consultant from a regulated entity or the Office of Finance unless the Director grants a waiver pursuant to § 1212.4.

(b) *Effective date.* The post-employment restriction in paragraph (a) of this section shall not apply to any officer or employee of FHFA or any former officer or employee of FHFA who ceased to be an officer or employee of FHFA before November 4, 2009.

§ 1212.4 Waiver.

At the written request of a senior examiner or former senior examiner, the Director may waive the post-employment restriction in § 1212.3 if he or she certifies, in writing, and on a case-by-case basis, that granting a waiver of such restriction does not affect the integrity of the supervisory program of FHFA.

§ 1212.5 Penalties.

(a) *General.* A senior examiner who, after leaving the employment of FHFA, violates the restriction set forth in § 1212.3 shall be subject to one or both of the following penalties—

(1) An order:

(i) Removing the individual from office at the regulated entity or the Office of Finance or prohibiting the individual from further participation in the affairs of the relevant regulated entity or the Office of Finance for a period of up to five years; and

(ii) Prohibiting the individual from participating in the affairs of any regulated entity or the Office of Finance for a period of up to five years; and/or

(2) A civil money penalty of not more than \$250,000.

(b) *Other penalties.* The penalties set forth in paragraph (a) of this section are not exclusive, and a senior examiner who violates the restrictions in § 1212.3 also may be subject to other administrative, civil, or criminal remedies or penalties as provided in law.

(c) *Procedural rights.* The procedures applicable to actions under paragraph (a) of this section are those provided in the Safety and Soundness Act under section 1376, in connection with the imposition of a civil money penalty; under section 1377, in connection with a removal and prohibition order (12 U.S.C. 4636 and 4636a, respectively); and under any regulations issued by FHFA implementing such procedures.

SUBCHAPTER B—ENTITY REGULATIONS

PART 1229—CAPITAL CLASSIFICATIONS AND PROMPT CORRECTIVE ACTION

Subpart A—Federal Home Loan Banks

Sec.

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- 1229.8 Mandatory actions applicable to significantly undercapitalized Banks.
- 1229.9 Discretionary actions applicable to significantly undercapitalized Banks.
- 1229.10 Actions applicable to critically undercapitalized Banks.
- 1229.11 Capital restoration plans.
- 1229.12 Procedures related to capital classification and other actions.

AUTHORITY: 12 U.S.C. 1426, 4513, 4526, 4613, 4614, 4615, 4616, 4617, 4618, 4622, 4623.

SOURCE: 74 FR 5604, Jan. 30, 2009, unless otherwise noted.

Subpart A—Federal Home Loan Banks

§ 1229.1 Definitions.

For purposes of this subpart:

Bank written in title case, means a Federal Home Loan Bank established under section 12 of the Bank Act (12 U.S.C. 1432).

Bank Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449).

Capital distribution means any payment by the Bank, whether in cash or stock, of a dividend, any return of capital or retained earnings by the Bank to its shareholders, any transaction in which the Bank redeems or repurchases capital stock, or any transaction in which the Bank redeems, repurchases or retires any other instrument which is included in the calculation of its total capital.

Class A stock means capital stock issued by a Bank, including subclasses, that has the characteristics specified in section 6(a)(4)(A)(i) of the Bank Act (12 U.S.C. 1426(a)(4)(A)(i)) and related regulations.

Class B stock means capital stock issued by a Bank, including subclasses, that has the characteristics specified in section 6(a)(4)(A)(ii) of the Bank Act (12 U.S.C. 1426(a)(4)(A)(ii)) and related regulations.

Consolidated obligations means any bond, debenture or note on which the Banks are jointly and severally liable and which was issued under section 11 of the Bank Act (12 U.S.C. 1431) and any implementing regulations, whether or not such instrument was originally issued jointly by the Banks or by the Federal Housing Finance Board on behalf of the Banks.

Critical capital level for a Bank means an amount equal to 2 percent of the Bank's total assets.

Director means the Director of the Federal Housing Finance Agency or his or her designee.

Executive officer means for a Bank any of the following persons, provided that the Director may from time to time add or remove persons, positions, or functions to or from the list (individually for one or more Banks or jointly for all the Banks) by communication to the affected Banks:

(1) Executive officers about whom the Banks must publicly disclose detailed compensation information under Regulation S-K, 17 CFR part 229, issued by the Securities and Exchange Commission;

(2) Any other executive who occupies one of the following positions or is in charge of one of the following subject areas:

(i) Overall Bank operations, such as the Chief Operating Officer or an equivalent employee;

(ii) Chief Financial Officer or an equivalent employee;

(iii) Chief Administrative Officer or an equivalent employee;

(iv) Chief Risk Officer or an equivalent employee;

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(v) Asset and Liability Management officer, or an equivalent employee;

(vi) Chief Accounting Officer or an equivalent employee;

(vii) General Counsel or an equivalent employee;

(viii) Strategic Planning officer or an equivalent employee;

(ix) Internal Audit officer or an equivalent employee; or

(x) Chief Information Officer or an equivalent employee; or

(3) Any other individual, without regard to title:

(i) Who is in charge of a principal business unit, division or function; or

(ii) Who reports directly to the Bank's chairman of the board of directors, vice chairman of the board of directors, president or chief operating officer.

FHFA means the Federal Housing Finance Agency.

Minimum capital requirement means the leverage and total capital requirements established for a Bank under section 6(a)(2) of the Bank Act (12 U.S.C. 1426(a)(2)) and related regulations, as such requirements may be revised by the Director, or any similar requirement established for a Bank by regulation, order, written agreement or other action.

New business activity means any activity undertaken by a Bank that requires approval from the FHFA under part 980 of this title.

Permanent capital means the retained earnings of a Bank, determined in accordance with generally accepted accounting principles in the United States (GAAP), plus the amount paid-in for the Bank's Class B stock.

Risk-based capital requirement means any capital requirement established for a Bank under section 6(a)(3) of the Bank Act (12 U.S.C. 1426(a)(3)) and related regulations that ensures a Bank will hold sufficient permanent capital and reserves to support the risks that arise from its operations.

Safety and Soundness Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) as amended.

Tangible equity means, for a Bank, the paid-in value of its outstanding capital stock plus its retained earnings calculated in accordance with gen-

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erally accepted accounting principles in the United States (GAAP) less the amount of any assets that would be intangible assets under GAAP.

Total capital means the sum of the Bank's permanent capital, the amount paid-in for its Class A stock, the amount of any general allowances for losses, and the amount of any other instruments identified in a Bank's capital plan that the Director has determined to be available to absorb losses incurred by such Bank. For a Bank that has issued neither Class A nor Class B stock, the Bank's total capital shall be the measure of capital used to determine compliance with its minimum capital requirement.

§ 1229.2 Determination of a Bank's capital classification.

(a) *Quarterly determination.* The Director shall determine the capital classification for each Bank no less often than once a quarter based on the capital classifications in § 1229.3 of this subpart. The Director may make a determination with regard to a capital classification for a Bank more often than the minimum required under this paragraph or make a determination for one or more Banks without making a determination for all the Banks.

(b) *Notification to a Bank.* Before finalizing any action to classify a Bank under this section, the Director shall provide a Bank written notice describing the proposed action and an opportunity to submit information that the Bank considers relevant to the proposed action in accordance with § 1229.12 of this subpart.

(c) *Notification to the FHFA.* A Bank shall provide written notification within ten calendar days of any event or development that has caused or is likely to cause its permanent or total capital to fall below the level necessary to maintain its capital classification at the level assigned in the most recent capital classification or reclassification determination by the Director or that is contained in the most recent notice of a proposed capital classification or reclassification provided under § 1229.12(a) of this subpart.

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§ 1229.3 Criteria for a Bank's capital classification.

(a) *Adequately capitalized.* Except where the Director has exercised authority to reclassify a Bank, a Bank shall be considered adequately capitalized if, at the time of the determination under § 1229.2(a) of this subpart, the Bank has sufficient permanent and total capital, as applicable, to meet or exceed its risk-based and minimum capital requirements.

(b) *Undercapitalized.* Except where the Director has exercised authority to reclassify a Bank, a Bank shall be considered undercapitalized if, at the time of the determination under § 1229.2(a) of this subpart, the Bank does not have sufficient permanent or total capital, as applicable, to meet any one or more of its risk-based or minimum capital requirements but such deficiency is not of a magnitude to classify the Bank as significantly undercapitalized or critically undercapitalized.

(c) *Significantly undercapitalized.* Except where the Director has exercised authority to reclassify a Bank, a Bank shall be considered significantly undercapitalized if, at the time of the determination under § 1229.2(a) of this subpart, the amount of permanent or total capital held by the Bank is less than 75 percent of what is required to meet any one of its risk-based or minimum capital requirements but the magnitude of the Bank's deficiency in total capital is not sufficient to classify it as critically undercapitalized.

(d) *Critically undercapitalized.* Except where the Director has exercised authority to reclassify a Bank, a Bank shall be considered critically undercapitalized if, at the time of the determination under § 1229.2(a) of this subpart, the total capital held by the Bank is less than or equal to the critical capital level for a Bank as defined under § 1229.1 of this subpart.

§ 1229.4 Reclassification by the Director.

(a) *Discretionary reclassification.* Where the Director determines that any of the grounds described in paragraph (b) of this section exist, the Director may reclassify a Bank as:

(1) Undercapitalized, if it is otherwise classified as adequately capitalized;

(2) Significantly undercapitalized, if it is otherwise classified as undercapitalized; or

(3) Critically undercapitalized if it is otherwise classified as significantly undercapitalized.

(b) *Grounds for discretionary reclassification.* Notwithstanding any other provision of this subpart, the Director may at any time reclassify a Bank under this section if:

(1) The Director determines in writing that:

(i) The Bank is engaging in conduct that could result in the rapid depletion of permanent or total capital;

(ii) The value of collateral pledged to the Bank has decreased significantly; or

(iii) The value of property subject to mortgages owned by the Bank has decreased significantly.

(2) The Director determines, after notice to the Bank and opportunity for an informal hearing before the Director, that a Bank is in an unsafe and unsound condition; or

(3) The Director finds, under § 1371(b) of Safety and Soundness Act (12 U.S.C. 4631(b)), that the Bank is engaging in an unsafe and unsound practice because the Bank's asset quality, management, earnings or liquidity were found to be less than satisfactory during the most recent examination, and any deficiency has not been corrected.

(c) *Procedures.* Before finalizing any action to reclassify a Bank under this section, the Director shall provide a Bank written notice describing the proposed action and an opportunity to submit information that the Bank considers relevant to the Director's proposed action in accordance with § 1229.12 of this subpart.

(d) *Duration.* Any condition, action or inaction by a Bank that is the basis for a decision to reclassify a Bank under this section or under any other authority provided the Director may be considered by the Director and form the basis of further, subsequent actions to reclassify the Bank until such time as the Bank remedies such condition or takes necessary action to correct such situation to the satisfaction of the Director.

(e) *Reservation of authority.* Nothing in this section shall prevent the Director from exercising any other authority under the Safety and Soundness Act, the Bank Act or any regulation to reclassify a Bank for reasons not set forth in paragraph (b) of this section or to take any other action against a Bank.

§ 1229.5 Capital distributions for adequately capitalized Banks.

(a) *Restriction.* An adequately capitalized Bank may not make a capital distribution if after doing so the Bank's capital would be insufficient to maintain a classification of adequately capitalized. A Bank may not make a capital distribution if such distribution would violate any restriction on the redemption or repurchase of capital stock or the payment of a dividend set forth in section 6 of the Bank Act (12 U.S.C. 1426) and any other applicable regulation.

(b) *Exception.* Notwithstanding the restriction in paragraph (a) of this section, the Director may permit a Bank to repurchase or redeem its shares of stock if the transaction is made in connection with the issuance of additional Bank shares or obligations in at least an equivalent amount to the shares that are redeemed or repurchased and will reduce the Bank's financial obligations or otherwise improve its financial condition. Any transaction under this paragraph also must conform with any restriction on the redemption or repurchase of Bank stock set forth in section 6 of the Bank Act (12 U.S.C. 1426) and in any other applicable regulation.

§ 1229.6 Mandatory actions applicable to undercapitalized Banks.

(a) *Mandatory Actions by the Bank.* A Bank that is classified as undercapitalized shall:

(1) Submit to the Director for approval a capital restoration plan that complies with the requirements and procedures established by § 1229.11 of this part and receive approval from the Director for such plan;

(2) Fulfill all terms, conditions and obligations contained in the capital restoration plan as approved by the Director;

(3) Not make any capital distribution that would result in the Bank being reclassified as significantly undercapitalized or critically undercapitalized, nor make a capital distribution if such distribution would violate any restriction on the redemption or repurchase of capital stock or the declaration or payment of a dividend set forth in section 6 of the Bank Act (12 U.S.C. 1426) or in any other applicable regulation;

(4) Not permit its average total assets in any calendar quarter to exceed its average total assets during the preceding calendar quarter, where such average is calculated based on the total amount of assets held by the Bank for each day in a quarter, unless:

(i) The Director has approved the Bank's capital restoration plan; and

(ii) The Director determines that:

(A) The increase in total assets is consistent with the approved capital restoration plan; and

(B) The ratio of tangible equity to the Bank's total assets is increasing at a rate sufficient to enable the Bank to become adequately capitalized within a reasonable time and consistent with any schedule established in the capital restoration plan; and

(5) Not acquire, directly or indirectly, an equity interest in any operating entity (other than as necessary to enforce a security interest granted to the Bank) nor engage in any new business activity unless:

(i) The Director has approved the Bank's capital restoration plan, the Bank is implementing the capital restoration plan and the Director determines that proposed acquisition or activity will further achievement of the goals set forth in that plan; or

(ii) The Director determines that the proposed acquisition or activity will be consistent with the safe and sound operation of the Bank and will further the Bank's compliance with its risk-based and minimum capital requirements in a reasonable period of time.

(b) *Mandatory reclassification by the Director.* The Director shall reclassify an undercapitalized Bank as significantly undercapitalized if:

(1) The Bank does not submit a capital restoration plan that is substantially in compliance with § 1229.11 of

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this subpart and within the time frame required.

(2) The Director does not approve the capital restoration plan submitted by the Bank; or

(3) The Director determines that the Bank has failed in any material respect to comply with its approved capital restoration plan or fulfill any schedule for action established by that plan.

(c) *Monitoring.* The Director shall monitor the condition of any undercapitalized Bank and monitor the Bank's compliance with the capital restoration plan and any restrictions imposed under this section or § 1229.7 of this subpart. As part of this process, the Director shall review the capital restoration plan and any restrictions or requirements imposed on the undercapitalized Bank to determine whether such plan, restrictions or requirements are consistent with the safe and sound operation of the Bank and will further the Bank's compliance with its risk-based and minimum capital requirements in a reasonable period of time.

[74 FR 5604, Jan. 30, 2009, as amended at 74 FR 38513, Aug. 4, 2009]

§ 1229.7 Discretionary actions applicable to undercapitalized Banks.

(a) *Discretionary safeguards.* The Director may take any action with regard to an undercapitalized Bank that may be taken with regard to a significantly undercapitalized Bank under section 1366 of the Safety and Soundness Act (12 U.S.C. 4616) or § 1229.7 or § 1229.8 of this subpart if the Director determines that such action is necessary to assure the safe and sound operation of the Bank and the Bank's compliance with its risk-based and minimum capital requirements in a reasonable period of time.

(b) *Procedures.* Before finalizing any action under this section, the Director shall provide a Bank written notice describing the proposed action or actions and an opportunity to submit information that the Bank considers relevant to the Director's decision to take such action in accordance with § 1229.12 of this subpart.

§ 1229.8 Mandatory actions applicable to significantly undercapitalized Banks.

A Bank that is classified as significantly undercapitalized:

(a) Shall submit to the Director for approval a capital restoration plan that complies with the requirements and procedures established by § 1229.11 of this part and receive approval from the Director for such plan;

(b) Fulfill all terms, conditions and obligations contained in the capital restoration plan once the plan is approved by the Director;

(c) Shall not make any capital distribution that would result in the Bank being reclassified as critically undercapitalized or that would violate any restriction on the redemption or repurchase of capital stock or the payment of a dividend set forth in section 6 of the Bank Act (12 U.S.C. 1426) or any applicable regulation;

(d) Shall not make any capital distribution not otherwise prohibited under paragraph (c) of this section absent the prior written approval of the Director, provided that the Director may approve such distribution only if the Director determines that:

(1) The capital distribution will enhance the ability of the Bank to meet its risk-based and minimum capital requirements promptly;

(2) The capital distribution will contribute to the long-term financial safety and soundness of the Bank; or

(3) The capital distribution is otherwise in the public interest;

(e) Shall not without prior written approval of the Director pay a bonus to any executive officer, provided that for purposes of this paragraph a bonus shall include any amount paid or accruing to an executive officer under a profit sharing arrangement;

(f) Shall not without the prior written approval of the Director compensate an executive officer at a rate exceeding the average rate of compensation of that officer during the 12 months preceding the calendar month in which the Bank became significantly undercapitalized, provided however, that for purposes of calculating the executive officer's average rate of compensation, such compensation shall not include any bonus or profit sharing

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paid or accruing to the officer during the 12 month period;

(g) Comply with §1229.6(a)(4) and (a)(5) of this subpart; and

(h) Comply with any on-going restrictions or obligations that were imposed on the Bank by the Director under §1229.7 of this subpart.

[74 FR 5604, Jan. 30, 2009, as amended at 74 FR 38513, Aug. 4, 2009]

§ 1229.9 Discretionary actions applicable to significantly undercapitalized Banks.

(a) *Actions by the Director.* The Director shall carry out this section by taking, at any time, one or more of the following actions with respect to a significantly undercapitalized Bank:

(1) Limit the increase in any obligations or class of obligations of the Bank, including any off-balance sheet obligations. Such limitation may be stated in an absolute dollar amount, as a percentage of current obligations or in any other form chosen by the Director;

(2) Reduce the amount of any obligations or class of obligations held by the Bank, including any off-balance sheet obligations. Such reduction may be stated in an absolute dollar amount, as a percentage of current obligations or in any other form chosen by the Director;

(3) Limit the increase in, or prohibit the growth of any asset or class of assets held by the Bank. Such limitation may be stated in an absolute dollar amount, as a percentage of current assets or in any other form chosen by the Director;

(4) Reduce the amount of any asset or class of asset held by the Bank. Such reduction may be stated in an absolute dollar amount, as a percentage of current obligations or in any other form chosen by the Director;

(5) Acquire new capital in the form and amount determined by the Director, which specifically may include requiring a Bank to increase its level of retained earnings;

(6) Modify, limit or terminate any activity of the Bank that the Director determines creates excessive risk;

(7) Take steps to improve the management at the Bank by:

(i) Ordering a new election for the Bank's board of directors in accordance with procedures established by the Director;

(ii) Dismissing particular directors or executive officers, in accordance with section 1366(b)(5)(B) of the Safety and Soundness Act (12 U.S.C. 4616(b)(5)(B)), who held office for more than 180 days immediately prior to the date on which the Bank became undercapitalized, provided further that such dismissals shall not be considered removal pursuant to an enforcement action under section 1377 of the Safety and Soundness Act (12 U.S.C. 4636a) and shall not be subject to the requirements necessary to remove an officer or director under that section; or

(iii) Ordering the Bank to hire qualified executive officers, the hiring of whom, prior to employment by the Bank and at the option of the Director, may be subject to review and approval by the Director; or

(8)(i) Reclassify a significantly undercapitalized Bank as critically undercapitalized if:

(A) The Bank does not submit a capital restoration plan that is substantially in compliance with §1229.11 of this part and within the time frame required;

(B) The Director does not approve the capital restoration plan submitted by the Bank; or

(C) The Director determines that the Bank has failed to make reasonable, good faith efforts to comply with its approved capital restoration plan and fulfill any schedule established by that plan.

(ii) Subject to paragraph (c) of this section, the Director may reclassify a significantly undercapitalized Bank under paragraph (a)(8)(i) of this section at any time the grounds for such action exist, notwithstanding the fact that such grounds had formed the basis on which the Director reclassified a Bank from undercapitalized to significantly undercapitalized.

(b) *Additional safeguards.* The Director may require a significantly undercapitalized Bank to take any other action not specifically listed in this section if the Director determines such action will help ensure the safe and sound operation of the Bank and the Bank's

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compliance with its risk-based and minimum capital requirements in a reasonable period of time more than any action specifically authorized under paragraph (a) of this section.

(c) *Procedures.* Before finalizing any action under this section, the Director shall provide a Bank written notice describing the proposed action or actions and an opportunity to submit information that the Bank considers relevant to the Director's decision to take such action in accordance with § 1229.12 of this subpart.

§ 1229.10 Actions applicable to critically undercapitalized Banks.

(a) *Appointment of conservator or receiver.* Notwithstanding any other provision of federal or state law, the Director may appoint the FHFA as conservator or receiver of any Bank at any time after the Director determines that the Bank is, or the Director otherwise exercises authority to reclassify the Bank as, critically undercapitalized.

(b) *Periodic determination*—(1) *Determination.* Not later than 30 calendar days after the Director first determines that a Bank is, or the Director otherwise exercises authority to reclassify the Bank as, critically undercapitalized, and at least once during each succeeding 30-day calendar period, the Director make a determination in writing as to whether:

(i) The assets of the Bank are, and during the preceding 60 calendar days have been, less than its obligations to its creditors and others, provided that the Director shall consider as an obligation only that amount of outstanding consolidated obligations for which the Bank is primary obligor or for which the Bank has been ordered to make payments of principal or interest on behalf of another Bank, or is actually making payments of principal or interest on behalf of another Bank; or

(ii) The Bank is not, and during the previous 60 calendar days has not been paying its debts on a regular basis as such debts become due, provided that this provision does not apply to any unpaid debts that are the subject of a *bona fide* dispute.

(2) *Mandatory receivership.* If the Director determines that the conditions

described in either paragraph (b)(1)(i) or (b)(1)(ii) of this section applies to a Bank, the Director shall appoint the FHFA as receiver for the Bank. The appointment of the FHFA as receiver under this paragraph shall immediately terminate any conservatorship established for the Bank.

(3) *Determination not required.* A determination under paragraph (b)(1) of this section shall not be required during any period in which the FHFA serves as receiver for a Bank.

(c) *Judicial review.* If the Director appoints the FHFA as conservator or receiver of a Bank under paragraph (a) or (b)(2) of this section, the Bank may within 30 days of such appointment bring an action in the United States district court for the judicial district in which the Bank was established pursuant to section 3 of the Bank Act (12 U.S.C. 1423) or in the United States District Court for the District of Columbia, for an order requiring the FHFA to remove itself as conservator or receiver.

(d) *Other applicable actions.* Until such time as FHFA is appointed as conservator or receiver for a critically undercapitalized Bank, a critically undercapitalized Bank shall be subject to all mandatory restrictions or obligations applicable to a significantly undercapitalized Bank under § 1229.8 of this subpart and will remain subject to any on-going restrictions or obligations that the Director imposed on the Bank under § 1229.7 or § 1229.9 of this subpart, or any restrictions or obligations that are applicable to the Bank under the terms of an approved capital restoration plan.

[74 FR 5604, Jan. 30, 2009, as amended at 74 FR 38513, Aug. 4, 2009]

§ 1229.11 Capital restoration plans.

(a) *Contents.* Each capital restoration plan submitted by a Bank shall set forth a plan to restore its permanent and total capital to levels sufficient to fulfill its risk-based and minimum capital requirements within a reasonable period of time. Such plan must be feasible given general market conditions and the conditions of the Bank and, at a minimum, shall:

(1) Describe the actions the Bank will take, including any changes that the

Bank will make to member stock purchase requirements, to assure that it will become adequately capitalized within the meaning of § 1229.3(a) of this subpart and, if appropriate, to resolve any structural or long term causes for the capital deficiency;

(2) Specify the level of permanent and total capital the Bank will achieve and maintain and provide quarterly projections indicating how each component of total and permanent capital and the major components of income, assets and liabilities are expected to change over the term of the plan;

(3) Specify the types and levels of activities in which the Bank will engage during the term of the plan, including any new business activities that it intends to begin during such term;

(4) Describe any other actions the Bank intends to take to comply with any other requirements imposed on it under this subpart A of part 1229;

(5) Provide a schedule which sets forth dates for meeting specific goals and benchmarks and taking other actions described in the proposed capital restoration plan, including setting forth a schedule for it to restore its permanent and total capital to levels necessary for meeting its risk-based and minimum capital requirements; and

(6) Address such other items that the Director shall provide in writing in advance of such submission.

(b) *Deadline for submission.* A Bank must submit a proposed capital restoration plan no later than 15 business-days after it receives written notification that such a plan is required either because the notice specifically states that the Director has required the submission of a plan or the notice indicates that the Bank's capital classification or reclassification is to a category for which a capital restoration plan is a mandatory action required of the Bank. The Director may extend this deadline if the Director determines that such extension is necessary. Any such extension shall be in writing and provide a specific date by which the Bank must submit its proposed capital restoration plan.

(c) *Review of the plan by the Director.* The Director shall have 30 calendar days from the date the Bank submits a

proposed capital restoration plan to approve or disapprove the plan. The Director may extend the period for consideration of a capital restoration plan for a single 30 calendar day period by providing the Bank with written notification that the decision deadline has been extended. The Director shall provide the Bank with written notification of the decision to approve or not approve a proposed capital restoration plan. If the Director does not approve the capital restoration plan, the written notification of such decision shall provide the reasons for the disapproval.

(d) *Resubmission.* If the Director does not approve the Bank's proposed capital restoration plan, the Bank shall submit a new capital restoration plan acceptable to the Director within 30 calendar days of the date that the Bank was notified of the disapproval. The Director may extend the period for the Bank's submission of a new acceptable capital restoration plan upon a determination that such extension is in the public interest. The Director shall provide the Bank written notice of the extension and include in such notice the date by which the Bank must submit an acceptable plan.

(e) *Amendments.* The Director, in his or her sole discretion, may approve amendments to an approved capital restoration plan if, after consideration of changes in conditions of the Bank, changes in market conditions and other relevant factors, the Director determines that such amendments are consistent with the restoration of the Bank's capital to levels necessary to meet its risk-based and minimum capital requirements in a reasonable period of time and with the safe and sound operations of the Bank.

(f) *Effectiveness of provisions.* A Bank is obligated to implement and fulfill all provisions of an approved capital restoration plan. Unless expressly addressed by the terms of the capital restoration plan, a Bank remains bound by each and every obligation and requirement set forth in the approved capital restoration plan until such requirement or obligation is amended under paragraph (e) of this section or terminated in writing by the Director.

(g) *Appointment of conservator or receiver.* Notwithstanding any other provision of federal or state law, the Director may appoint the FHFA as conservator or receiver of any Bank that is classified as undercapitalized or significantly undercapitalized if the Bank fails to submit a capital restoration plan acceptable to the Director within the time frames established by this section or if the Bank materially fails to implement any capital restoration plan that has been approved by the Director. A Bank may within 30 days of such appointment bring an action in the United States district court for the judicial district in which the Bank is established pursuant to section 3 of the Bank Act (12 U.S.C. 1423) or in the United States District Court for the District of Columbia, for an order requiring the FHFA to remove itself as conservator or receiver.

[74 FR 5604, Jan. 30, 2009, as amended at 74 FR 38513, Aug. 4, 2009]

§ 1229.12 Procedures related to capital classification and other actions.

(a) *Classification or reclassification of a Bank.* Before finalizing any decision to classify a Bank under § 1229.2(a) of this subpart or reclassify the Bank under § 1229.4(a) of this subpart, the Director shall provide the Bank with written notification of the proposed action that states the reasons for the proposed action and describes the information on which the proposed action is based. The notice required under this paragraph may be combined with the notice of a proposed supervisory action required under paragraph (b) of this section. The Director also may combine a notice informing the Bank of its capital classification and simultaneously informing the Bank that the Director intends to reclassify a Bank to a lower capital classification category.

(b) *Notice of a supervisory action.* Before finalizing any action or actions authorized under § 1229.7 or § 1229.9 of this subpart, the Director shall provide the Bank with written notification of the proposed action that states the reasons for the proposed action and describes the information on which the proposed action is based. The notice required under this paragraph may be combined with the notice of a proposed

action to classify or reclassify the Bank required under paragraph (a) of this section.

(c) *Bank response.* During the 30 calendar day period beginning on the date that the Bank is provided notice under paragraph (a) or (b) of this section of a proposed action or actions, a Bank may submit to the Director any information that the Bank considers relevant or appropriate for the Director to consider in determining whether to finalize the proposed action. The Director may, in his or her sole discretion, convene an informal hearing with representatives of the Bank to receive or discuss any such information. The Director, in his or her sole discretion, also may extend the period in which the Bank may respond to a notice for an additional 30 calendar days for good cause, or shorten such comment period if the Director determines the condition of the Bank requires faster action or a shorter comment period or if the Bank consents to a shorter comment period. The Director shall inform the Bank in writing, which may be provided as part of the notice required under paragraphs (a) or (b) of this section, of any decision to extend or shorten the comment period. The failure of a Bank to provide information during the allotted comment period will waive any right of the Bank to comment on the proposed action.

(d) *Final action.* At the earlier of the completion of the comment period established under paragraph (c) or the receipt of information provided by the Bank during such period, the Director shall determine whether to take the proposed action or actions that were the subject of the notice under paragraphs (a) or (b) of this section, after taking into consideration any information provided by the Bank. Such notice shall respond to any information submitted by the Bank. Any final order that the Bank take action, refrain from action or comply with any other requirement that was the subject of a notice under paragraph (b) of this section shall take effect upon the Bank's receipt of the notice required under this paragraph, unless a different effective date is set forth in this notice, and shall remain in effect and binding on the Bank until terminated in writing by the Director or until any terms and

conditions for termination, as set forth in the notice, have been met.

(e) *Final actions under this section.* Any final decision that the Bank take action, refrain from action or comply with any other requirement that was the subject of a notice under paragraph (b) of this section shall constitute an order under the Safety and Soundness Act. The Director in his or her discretion may apply to the United States District Court for the District of Columbia or to the United States district court for the judicial district in which the Bank in question is established pursuant to section 3 of the Bank Act (12 U.S.C. 1423) for the enforcement of such order, as allowed under §1375 of the Safety and Soundness Act (12 U.S.C. 4635). In addition, a Bank or any executive officer or director of a Bank can be subject to enforcement action, including the imposition of civil monetary penalties, under §1371, §1372 or §1376 of the Safety and Soundness Act (12 U.S.C. 4631, 4632, or 4636) for failure to comply with such an order.

(f) *Judicial review.* A Bank that is not classified as critically undercapitalized may obtain judicial review of any final capital classification decision or of any final decision to take supervisory action made by the Director under §1229.2, §1229.4, §1229.7 or §1229.9 in accordance with the requirements and procedures set forth in §1369D of the Safety and Soundness Act (12 U.S.C. 4623).

PART 1231—GOLDEN PARACHUTE PAYMENTS

Sec.

1231.1 Purpose.

1231.2 Definitions.

1231.3–1231.4 [Reserved]

1231.5 Factors to be taken into account.

AUTHORITY: 12 U.S.C. 4518(e).

SOURCE: 73 FR 53357, Sept. 16, 2008, unless otherwise noted.

§ 1231.1 Purpose.

The purpose of this part is to implement section 1318(e) of the Act by setting forth the standards that the Director will take into consideration in determining whether to limit or prohibit

golden parachute payments to entity-affiliated parties.

[73 FR 54673, Sept. 23, 2008]

§ 1231.2 Definitions.

The following definitions apply to the terms used in this part:

(a) *Act* means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*), as amended by the Federal Housing Finance Regulatory Reform Act of 2008, enacted under Division A of the HERA.

(b) *Director* means the Director of FHFA or his or her designee.

(c) *Enterprise* means the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, Enterprises) and, except as provided by the Director, any affiliate thereof.

(d) *Entity-affiliated party* means—

(1) Any director, officer, employee, or controlling stockholder of, or agent for, a regulated entity;

(2) Any shareholder, affiliate, consultant, or joint venture partner of a regulated entity, and any other person, as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of the affairs of a regulated entity, provided that a member of a Bank shall not be deemed to have participated in the affairs of that Bank solely by virtue of being a shareholder of, and obtaining advances from, that Bank;

(3) Any independent contractor for a regulated entity (including any attorney, appraiser, or accountant), if—

(i) The independent contractor knowingly or recklessly participates in—

(A) Any violation of any law or regulation;

(B) Any breach of fiduciary duty; or

(C) Any unsafe or unsound practice; and

(ii) Such violation, breach, or practice caused, or is likely to cause, more than a minimal financial loss to, or a significant adverse effect on, the regulated entity;

(4) Any not-for-profit corporation that receives its principal funding, on an ongoing basis, from any regulated entity; and

(5) The Office of Finance.

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(e) *Federal Home Loan Bank* means a bank established under the Federal Home Loan Act; the term “Federal Home Loan Banks” means, collectively, all the Federal Home Loan Banks.

(f)(1) *Golden parachute payment* means any payment (or any agreement to make any payment) in the nature of compensation by any regulated entity for the benefit of any current entity-affiliated party pursuant to an obligation of such regulated entity that—

(i) Is contingent on, or by its terms is payable on or after, the termination of such party’s primary employment or affiliation with the regulated entity; and

(ii) Is received on or after the date on which—

(A) The regulated entity became insolvent;

(B) Any conservator or receiver is appointed for such regulated entity; or

(C) The Director determines that the regulated entity is in a troubled condition.

(2) The term “golden parachute payment” shall not include:

(i) Any payment made pursuant to a pension or retirement plan which is qualified (or is intended within a reasonable period of time to be qualified) under section 401 of the Internal Revenue Code of 1986 (26 U.S.C. 401) or pursuant to a pension or other retirement plan which is governed by the laws of any foreign country;

(ii) Any payment made pursuant to a bona fide deferred compensation plan or arrangement which the Director determines, by regulation or order, to be permissible; or

(iii) Any payment made by reason of death or by reason of termination caused by the disability of an entity-affiliated party.

(3) Any payment which would be a golden parachute payment but for the fact that such payment was made before the date referred to in paragraph (f)(1)(ii) shall be treated as a golden parachute payment if the payment was made in contemplation of the occurrence of an event described that paragraph.

(g) *FHFA* means the Federal Housing Finance Agency.

(h) *HERA* means the Housing and Economic Recovery Act of 2008, Public Law No. 110-289, 122 Stat. 2654 (July 30, 2008).

(i) *Office of Finance* means the Office of Finance of the Federal Home Loan Bank System (or any successor thereto).

(j) *Regulated entity* means the Federal National Mortgage Association and any affiliate thereof; the Federal Home Loan Mortgage Corporation and any affiliate thereof; or any Federal Home Loan Bank; the term “regulated entities” means, collectively, the Federal National Mortgage Association and any affiliate thereof; the Federal Home Loan Mortgage Corporation and any affiliate thereof; and any Federal Home Loan Bank.

(k) *Troubled condition* means a regulated entity that—

(1) Is subject to a cease-and-desist order or written agreement issued by the FHFA that requires action to improve the financial condition of the regulated entity or is subject to a proceeding initiated by the Director, which contemplates the issuance of an order that requires action to improve the financial condition of the regulated entity, unless otherwise informed in writing by the FHFA; or

(2) Is informed in writing by the Director that it is in a troubled condition for purposes of the requirements of this part on the basis of the regulated entity’s most recent report of examination or other information available to the FHFA.

(1)–(n) [Reserved]

§ 1231.3–1231.4 [Reserved]

§ 1231.5 Factors to be taken into account.

In determining whether to prohibit or limit any golden parachute payment, the Director shall consider the following factors—

(a) Whether there is a reasonable basis to believe that the entity-affiliated party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the regulated entity that has had a material effect on the financial condition of the regulated entity;

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(b) Whether there is a reasonable basis to believe that the entity-affiliated party is substantially responsible for the insolvency of the regulated entity, the appointment of a conservator or receiver for the regulated entity, or the troubled condition of the regulated entity (as defined in regulations prescribed by the Director);

(c) Whether there is a reasonable basis to believe that the entity-affiliated party has materially violated any applicable provision of Federal or State law or regulation that has had a material effect on the financial condition of the regulated entity;

(d) Whether the entity-affiliated party was in a position of managerial or fiduciary responsibility;

(e) The length of time that the party was affiliated with the regulated enti-

ty, and the degree to which the payment reasonably reflects compensation earned over the period of employment and the compensation involved represents a reasonable payment for services rendered; and

(f) Any other factor the Director determines relevant to the facts and circumstances surrounding the golden parachute payment, including any fraudulent act or omission, breach of fiduciary duty, violation of law, rule, regulation, order, or written agreement, and the level of willful misconduct, breach of fiduciary duty, and malfeasance on the part of an entity-affiliated party.

[73 FR 53357, Sept. 16, 2008, as amended at 73 FR 54673, Sept. 23, 2008; 74 FR 5102, Jan. 29, 2009]

SUBCHAPTER C—ENTERPRISES

PART 1250—FLOOD INSURANCE

Sec.

1250.1 Purpose.

1250.2 Procedural requirements.

1250.3 Civil money penalties.

AUTHORITY: 12 U.S.C. 4521(a)(4) and 4526; 28 U.S.C. 2461 note; 42 U.S.C. 4001 note; 42 U.S.C. 4012a(f)(3), (4), (5), (8), (9), and (10).

SOURCE: 74 FR 2349, Jan. 15, 2009, unless otherwise noted.

§ 1250.1 Purpose.

The purpose of this part is to set forth the responsibilities of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, Enterprises) under the Flood Disaster Protection Act of 1973 (FDPA), as amended (42 U.S.C. 4002 *et seq.*) and the procedures to be used by the Federal Housing Finance Agency (FHFA) in any proceeding to assess civil money penalties against an Enterprise.

§ 1250.2 Procedural requirements.

(a) *Procedures.* An Enterprise shall implement procedures reasonably designed to ensure for any loan that is secured by improved real estate or a mobile home located in an area that has been identified, at the time of the origination of the loan or at any time during the term of the loan, by the Director of the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance is available under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 *et seq.*), as amended and purchased by the Enterprise, the building or mobile home and any personal property securing the loan is covered for the term of the loan by flood insurance in an amount at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, as amended.

(b) *Applicability.* (1) Paragraph (a) of this section shall apply only with respect to any loan made, increased, ex-

tended, or renewed after September 22, 1995.

(2) Paragraph (a) of this section shall not apply to any loan having an original outstanding balance of \$5,000 or less and a repayment term of one year or less.

§ 1250.3 Civil money penalties.

(a) *In general.* If an Enterprise is determined by the Director of FHFA, or his or her designee, to have a pattern or practice of purchasing loans in violation of the procedures established pursuant to § 1250.2, the Director of FHFA, or his or her designee, may assess civil money penalties against such Enterprise in such amount or amounts as deemed to be appropriate under paragraph (c) of this section.

(b) *Notice and hearing.* A civil money penalty under this section may be assessed only after notice and an opportunity for a hearing on the record has been provided to the Enterprise.

(c) *Amount.* The maximum civil money penalty amount is \$385 for each violation that occurs before the effective date of this part, with total penalties not to exceed \$110,000. For violations that occur on or after the effective date of this part, the civil money penalty under this section may not exceed \$485 for each violation, with total penalties assessed under this section against an Enterprise during any calendar year not to exceed \$140,000.

(d) *Deposit of penalties.* Any penalties under this section shall be paid into the National Flood Mitigation Fund in accordance with section 1367 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104d.), as amended.

(e) *Additional penalties.* Any penalty under this section shall be in addition to, and shall not preclude, any civil remedy, or criminal penalty otherwise available.

(f) *Statute of limitations.* No civil money penalty may be imposed under this section after the expiration of the four-year period beginning on the date of the occurrence of the violation for which the penalty is authorized under this section.

PART 1252—PORTFOLIO HOLDINGS

Sec.

1252.1 Enterprise portfolio holdings criteria.

1252.2 Effective duration.

AUTHORITY: 12 U.S.C. 4624.

SOURCE: 74 FR 5618, Jan. 30, 2009, unless otherwise noted.

§ 1252.1 Enterprise portfolio holding criteria.

The Enterprises are required to comply with the portfolio holdings criteria set forth in their respective Senior Preferred Stock Purchase Agreements with the Department of the Treasury, as they may be amended from time to time.

§ 1252.2 Effective duration.

This part shall be in effect for each Enterprise so long as—

(a) This part has not been superseded through amendment, and

(b) The Enterprise remains subject to the terms and obligations of the respective Senior Preferred Stock Purchase Agreement.

PART 1253—PRIOR APPROVAL FOR ENTERPRISE PRODUCTS

Sec.

1253.1 Purpose and authority.

1253.2 Definitions.

1253.3 Notice of new activity.

1253.4 New product approval.

1253.5 Confidential information.

1253.6 Certifying and nullifying an approval.

1253.7 Failure to comply.

1253.8 Availability of new product to an Enterprise after it has been approved for the other Enterprise.

1253.9 Preservation of authority.

APPENDIX TO PART 1253—PRIOR APPROVAL FOR ENTERPRISE PRODUCTS: INSTRUCTIONS AND NOTICE OF NEW ACTIVITY FORM

AUTHORITY: 12 U.S.C. 4526; 12 U.S.C. 4541.

SOURCE: 74 FR 31604, July 2, 2009, unless otherwise noted.

§ 1253.1 Purpose and authority.

The purpose of this part is to establish policies and procedures implementing the prior approval authority for enterprise products, in accordance with section 1321 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and

Soundness Act) (12 U.S.C. 4541), as amended.

§ 1253.2 Definitions.

For purposes of this part:

Authorizing statute means, in the case of Fannie Mae, the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 *et seq.*) and, in the case of Freddie Mac, the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 *et seq.*).

Director means the Director of the Federal Housing Finance Agency or his or her designee.

Enterprise means the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac).

FHFA means the Federal Housing Finance Agency.

New activity means with respect to an Enterprise, any business line, business practice, or service, including guarantee, financial instrument, consulting, or marketing, that is proposed to be undertaken by the Enterprise either on a standalone basis or as an incident to providing one or more Enterprise products to the market, and which was—

(a) Not initially engaged in prior to July 30, 2008;

(b) Commenced by the Enterprise prior to July 30, 2008, but which, after July 30, 2008, the Enterprise ceased to engage in, and presently intends to resume; or

(c) Offered or engaged in by the Enterprise after July 30, 2008, at a significantly different level, or in a significantly different manner, in terms of the activity's effect on public interest or risk to the Enterprise or the mortgage finance or financial system.

The term “new activity” does not include—

(1) Any Enterprise business practice, transactions, or conduct performed solely as an incident to the administration of the Enterprise's internal affairs to conduct its business; or

(2) Any business practice or service undertaken by an Enterprise that is *de minimis* in scope, volume, risk, or duration.

New product means any activity that the Director determines merits public notice and comment on matters of

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compliance with the applicable authorizing statute, safety and soundness, or public interest. “New product” does not include—

(a) The automated loan underwriting system of an Enterprise in existence as of July 30, 2008, including any upgrade to the technology, operating system, or software to operate the underwriting system;

(b) Any modification to the mortgage terms and conditions or mortgage underwriting criteria relating to the mortgages that are purchased or guaranteed by the Enterprise, provided that such modifications do not alter the underlying transaction so as to include services or financing, other than residential mortgage financing;

(c) Any activity that is substantially similar to the activities described in paragraphs (a) or (b) of this section;

(d) Any activity that is substantially similar to an activity or product that has been approved in accordance with this part for either Enterprise; or

(e) Any activity that is substantially similar to an activity or product continuously undertaken by the other Enterprise since prior to July 30, 2008.

Substantially similar. In considering whether an activity is “substantially similar” to any activity described in section 1321(e)(1)(A) and (B) of the Safety and Soundness Act, 12 U.S.C. 4541(e)(1)(A) and in paragraphs (a) or (b) of this section under the definition of new product, or to any activity approved in accordance with this part, or continuously engaged in by the other Enterprise as referenced in paragraphs (d) and (e) of this section under the definition of new product, the Director may consider if the activity in question—

(1) Is a product;

(2) Is authorized under the applicable authorizing statute;

(3) Represents an upgrade to the way an approved product is delivered;

(4) Poses a significant change in risk to the Enterprise or the mortgage finance system from a previously approved product or activity;

(5) Involves a significant change in terms, conditions, or limitations expressly contained in any prior approval granted under this part;

(6) Poses a significant change in its effect on the public interest compared to a previously approved product or activity;

(7) Poses a significant change from a previously approved product or activity and if so, does a tradeoff exist in the composite of risk, public interest, and safety and soundness elements in the proposed new activity;

(8) Is likely to have significantly more enterprise resources dedicated to it;

(9) Requires approval by regulators other than FHFA, including Federal, State, or local regulators;

(10) Involves new classes or types of borrowers, investors, or counterparties;

(11) Involves new classes or types of collateral; or

(12) Such other factor as the Director determines to be appropriate.

§ 1253.3 Notice of new activity.

(a) Before commencing a new activity, an Enterprise must submit a Notice of New Activity (Notice) to the FHFA, and either receive a determination that the new activity is not a new product, await passage of the 15 business-day period as described in paragraph (d) of this section, or, where FHFA determines the new activity to be a new product, await approval of the new product under § 1253.4. In addition, for any new activity that an Enterprise seeks to engage in which FHFA had previously approved in accordance with this part for the other Enterprise, or in which the other Enterprise had engaged continuously since prior to July 30, 2008, the Enterprise must submit a Notice to FHFA. In support of its Notice, the Enterprise shall submit information sufficient to allow the Director to make a determination on the Notice pursuant to section 1321 of the Safety and Soundness Act (12 U.S.C. 4541), as amended, including any information required by FHFA by regulation or otherwise. The Enterprise shall provide a thorough, meaningful, complete and specific description of the new activity such that the public will be able to provide fully informed comment on the new activity if FHFA determines the new activity to be a new product. Such information shall include that contained in the FHFA Notice Form and

the Instructions for the FHFA Notice of New Activity Form (Notice Form Instructions) that appear in the appendix of this part. The Notice Form and Notice Form Instructions may be amended from time to time by written direction of the Director. Requests for confidential treatment for any portion of an Enterprise's submission must be made consistent with § 1253.5.

(b) FHFA will evaluate a Notice to establish whether the submission contains sufficient information for FHFA to make a determination whether the new activity is a new product subject to prior approval. Upon establishing that the Notice contains sufficient information, FHFA shall deem the submission complete and "received" for purposes of section 1321(e)(2)(B) of the Safety and Soundness Act (12 U.S.C. 4541(e)(2)(B)), and shall notify the Enterprise accordingly.

(c) No later than 15 business-days after the Notice is deemed completed and "received" for purposes of section 1321(e)(2)(B) of the Safety and Soundness Act (12 U.S.C. 4541(e)(2)(B)), the Director will make a written determination on the Notice, and shall notify the Enterprise accordingly. The Director may also approve the new activity subject to such terms, conditions, or limitations on the Enterprise's engagement in the new activity as the Director determines to be appropriate.

(d) If the Director fails to make a determination within the 15 business-day period specified in paragraph (c) of this section, the Enterprise may commence the new activity. The Director's failure to make a determination within the 15-day period does not limit or restrict the Director's safety and soundness authority or the authority of the Director to review the new activity to determine whether the activity is consistent with the statutory mission of the Enterprise.

§ 1253.4 New product approval.

(a) *Public notice.* If the Director determines that the new activity is a new product, FHFA shall publish a public notice soliciting comments on the proposed product for a 30 calendar-day period.

(1) The public notice will describe the new product and state the closing date of the public comment period. The public notice will provide instructions for submission of public comment.

(2) The Director will consider all public comments received by the closing date of the comment period.

(3) In computing the 30 calendar-day public comment period, FHFA excludes the day on which the public notice is published in the FEDERAL REGISTER, from which the period begins to run, and includes the last day of the period, regardless of whether it is a Saturday, Sunday, or legal holiday.

(b) *Director's determination.* (1) No later than 30 calendar-days after the end of the public comment period, the Director will provide the Enterprise with a written determination on whether it may proceed with the new product. The written determination will specify the grounds for the Director's determination.

(2) The Director will approve the new product if the Director determines that the new product complies with the applicable authorizing statute, is in the public interest, and is consistent with the safety and soundness of the Enterprise and the mortgage finance and financial system. The Enterprise may then offer the new product subject to any terms, conditions, or limitations as may be established by the Director.

(3) Among the factors that the Director may consider when determining whether a new product is in the public interest are—

(i) The degree to which the new product might reasonably be expected to advance any of the purposes of the Enterprise under the applicable authorizing statute;

(ii) The degree to which the new product serves underserved markets as set forth in section 1335 of the Safety and Soundness Act (12 U.S.C. 4565);

(iii) The degree to which the new product is being supplied or could be supplied by non-government-sponsored-enterprise firms;

(iv) Other alternatives for providing the new product;

(v) The degree to which the new product promotes competition in the marketplace or, to the contrary, would result in less competition and greater

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concentration of economic activity or risk;

(vi) The degree to which Enterprise provision of the new product overcomes natural market barriers or inefficiencies;

(vii) The degree to which Enterprise provision of the new product might raise or mitigate systemic risks to the mortgage, mortgage finance or other financial markets;

(viii) The degree to which the new product furthers fair housing; and

(ix) Such other factors determined appropriate by the Director.

(4) The Director will disapprove the new product if the Director determines that approval is inconsistent with applicable law, regulation, or FHFA policy thereunder, or contrary to public interest or the safety and soundness of the Enterprise or the mortgage finance or financial system. If the Director disapproves the new product, the Enterprise may not offer the new product.

(5) The Director may establish terms, conditions, or limitations on the Enterprise's offering of the new product to ensure that the product offering is consistent with applicable statutory and regulatory standards, FHFA policies, public interest, or the safety and soundness of the Enterprise or the mortgage finance or financial system.

(6) If the Director fails to make a determination within the 30 calendar-day period that begins on the day after the end of the public comment period, the Enterprise may offer the new product. The Director's failure to make a determination within such 30-day period does not limit or restrict the Director's safety and soundness authority or the authority of the Director to review the new product to determine that the product is consistent with the statutory mission of the Enterprise.

(c) *Temporary approval.* (1) FHFA may approve a new product without first seeking public comments as described in § 1253.4(c) if—

(i) The Enterprise submits a specific request for Temporary Approval that describes the exigent circumstances that make the delay associated with the 30-day public comment period contrary to the public interest and the Director determines that exigent circumstances exist and that delay associ-

ated with first seeking public comment would be contrary to the public interest; or

(ii) Notwithstanding the absence of a request by the Enterprise for Temporary Approval, the Director determines on his or her own initiative that there are exigent circumstances that make the delay associated with first seeking public comment contrary to the public interest.

(2) The Director may impose terms, conditions, or limitations on the Temporary Approval to ensure that the new product offering is consistent with applicable statutory and regulatory standards, FHFA policies, public interest, and the safety and soundness of the Enterprise or the mortgage finance system.

(3) If the Director grants Temporary Approval, the Director will notify the Enterprise in writing of the Director's decision, and include the period for which it is effective and any terms, conditions or limitations. Upon granting of Temporary Approval, FHFA will also publish the request for public comment to begin the process for permanent approval.

(4) If the Director denies a request for Temporary Approval, the Director will notify the Enterprise in writing of the Director's decision, and will evaluate the new product in accordance with paragraphs (a) through (c) of this section.

(d) *Additional information.* The Director may request any information in addition to that supplied in the completed Notice if, as a result of public comment or otherwise in the course of considering the Notice, the Director believes that the information is necessary for his or her decision. The Director may disapprove a new product if he or she does not receive the information requested from the Enterprise in sufficient time to permit adequate evaluation of the information within the time periods set forth in paragraph (c) of this section.

§ 1253.5 Confidential information.

(a) *Information presumed public.* FHFA will treat all information an Enterprise submits in a Notice as public information, except as provided in paragraphs (b) through (d) of this section. FHFA

will also treat information provided by a commenter, in response to a notice requesting comment on an Enterprise new product, as public information, except as provided in paragraphs (b) through (d) of this section.

(b) *Confidential treatment request.* An Enterprise or commenter may designate specific information as confidential and request that it not be made publicly available. For any information that an Enterprise or commenter seeks confidential treatment, the Enterprise or commenter is required to submit a complete copy of the Notice or comment, with a specific request for confidential treatment. Simultaneously, the Enterprise or commenter is required to submit a copy of the Notice or comment containing only those portions for which no request for confidential treatment is made, and from which those portions for which confidential treatment is requested have been redacted. The Enterprise or commenter must specify the bases for designated information not being made public as set forth in paragraph (c) of this section.

(c) *Required information.* The Enterprise or commenter is required to provide the following information in support of its request for confidential treatment of the designated information—

(1) Identification of the specific information for which confidential treatment is sought, and the specific Notice for which the information is being submitted;

(2) Explanation of the bases for the proposed confidential treatment including, but not limited to, why the information is “commercial or financial information obtained from a person and privileged or confidential” as that phrase is used in Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4), and § 1202.4(a)(4) of this chapter;

(3) Explanation of the relevance and necessity of the information to whether the Notice should be approved or denied;

(4) Explanation of how disclosure of the information would result in substantial harm to the competitive position of the Enterprise or commenter;

(5) Explanation of whether the information is available to the public and the extent of any previous disclosure to third parties;

(6) Justification of the time period during which the Enterprise or commenter asserts that the material should not be available for public disclosure; and

(7) Any other information that the Enterprise or commenter seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.

(d) *FHFA determination.* FHFA will determine whether the designated information may be withheld from public disclosure and will notify the Enterprise or commenter of the determination. In the event that FHFA determines the information may not be withheld from public disclosure, the Enterprise or commenter may withdraw the information or consent to public disclosure. Requests for confidential treatment that do not comply with paragraphs (b) and (c) of this section will not be considered.

§ 1253.6 Certifying and nullifying an approval.

(a) An Enterprise shall certify, through an executive officer, as that term is defined by § 1770.3(g) of this title, that any filing or supporting material submitted to FHFA pursuant to regulations in this part contains no material misrepresentations or omissions. FHFA may review and verify any information filed in connection with a Notice. If FHFA discovers a material misrepresentation or omission after the Director has rendered a decision on the filing, FHFA may nullify any approval or modify the terms, conditions, and limitations to such approval. For purposes of this paragraph, an Enterprise’s authority to offer a new product or engage in a new activity by reason of the Director’s not having made an explicit determination within the statutory time period constitutes an approval.

(b) Any person responsible for any material misrepresentation or omission in a submission or supporting materials may be subject to enforcement action and other penalties, including

criminal penalties provided in 18 U.S.C. 1001.

§ 1253.7 Failure to comply.

(a) Unless the Director otherwise informs the Enterprise in writing, an Enterprise must cease offering a new product or engaging in a new activity immediately upon discovering or receiving notice from the Director that the Enterprise has—

(1) Offered a new product or commenced a new activity without submitting a Notice;

(2) Offered a new product or commenced a new activity after submitting a Notice but before approval is granted, and before the expiration of the time provided for the Director to make a determination under §§ 1253.3 and 1253.4;

(3) Offered a new product after the Director disapproved it; or

(4) Failed to adhere to any terms, conditions or limitations established by the Director in his or her approval of a new product or activity.

(b) Within five (5) business-days of the discovery or notice of any of the events described in paragraph (a) of this section, the Enterprise must provide the Director a written description of the failure or failures of controls that resulted in the offering of the new product or commencement of the new activity in contravention of this regulation, and the steps that the Enterprise has taken or will take to remediate the control failures. The Enterprise must provide the board of directors of the Enterprise and chief risk officer, internal audit, and compliance officer of the Enterprise with a copy of the written description on the same date the description is provided to the Director of FHFA.

(c) In the event that the Enterprise elects to resubmit the Notice of a new product or new activity that was undertaken in contravention of this regulation, the resubmission must provide sufficient documentation of the effective-

ness of the remediation efforts described in paragraph (b) of this section.

(d) Failure to comply with paragraphs (a) or (b) of this section above may result in FHFA's taking enforcement action, including pursuant to 12 U.S.C. 4631 (orders to cease and desist), 12 U.S.C. 4632 (temporary orders to cease and desist), and 12 U.S.C. 4636 (civil money penalties).

§ 1253.8 Availability of new product to an Enterprise after it has been approved for the other Enterprise.

(a) If the Director approves a new product for one Enterprise or the new product is otherwise available to that Enterprise under § 1253.4, the other Enterprise may also undertake that new product, subject to submitting a request to the Director in the form of a Notice under § 1253.3 and approval by the Director.

(b) The Director may require such further information from the requesting Enterprise as he or she deems necessary to approve or deny the request. Approving the request does not require public notice and comment.

§ 1253.9 Preservation of authority.

(a) The Director's exercise of his or her authority pursuant to the prior approval authority for products under section 1321 of the Safety and Soundness Act (12 U.S.C. 4541), and this regulation and other issuances in no way restricts—

(1) The safety and soundness authority of the Director over all new and existing products or activities; or

(2) The authority of the Director to review all new and existing products or activities to determine that such products or activities are consistent with the statutory mission of an Enterprise.

APPENDIX TO PART 1253—PRIOR APPROVAL FOR ENTERPRISE PRODUCTS—INSTRUCTIONS AND NOTICE OF NEW ACTIVITY FORM

Appendix to Part 1253

PRIOR APPROVAL FOR ENTERPRISE PRODUCTS

INSTRUCTIONS for the NOTICE of NEW ACTIVITY FORM

INSTRUCTIONS FOR NNA SUBMISSION**GENERAL INSTRUCTIONS**

The Notice of New Activity (NNA) submission addresses two functions of the Federal Housing Finance Agency—it provides information on activities that may constitute a new product or new activity under the Housing and Economic Recovery Act of 2008 (12 USC 4541) and on activities that do not constitute a new product subject to the approval provisions of the law, but represent an activity that merits safety and soundness review under multiple provisions of the Federal Housing Enterprises Financial Safety and Soundness Act (12 USC 4501 *et seq.*)

Once the submission is made, FHFA will first determine if the activity is a new product and will direct consideration of such product under the provisions of the statute and regulation, which may involve public comment. If the new activity is determined not to be a new product, then the information contained in the submission will be employed by FHFA for a review of safety and soundness matters as part of its routine supervisory program.

A. Notice of New Activity (NNA) Submission

1. *New Activity.* A new activity for purposes of this submission includes the planned deployment of a new activity that constitutes a new product under the approval provision of FHEFSSA as amended by HERA or a significant expansion or alteration of an existing activity or product that does not require approval under HERA amendments of 2008 but is to be reviewed under safety and soundness provisions of the Act. A new activity may include alteration of an existing activity in such a manner as to affect significantly the risk, management, capital effect, operational controls, legal effect, anticipated business impact on the Enterprise (dollar effect), and accounting or taxation for such activity. This will include a pilot program.

A new activity does not include a minor, non-substantive transaction or activity that does not involve significant credit, interest rate, operational (including internal control and accounting) or reputation risk separate and apart from an existing activity. In general, a new activity would not include an increase in an existing product or activity of less than a 25% investment increase. For

example, if an existing multi-family mortgage purchase activity will be altered to require collection and analysis of additional loan data to facilitate Enterprise purchases, even though the change may be labeled as “new” by the Enterprise in its communications, the Enterprise may inform FHFA that it does not constitute a new activity but rather an activity or product addition or enhancement. The Enterprises will work with examiners to assure clarity regarding whether an activity is new and fits within the Notice of New Activity (NNA) submission requirement.

2. *New Product.* A new product is determined by the Director of the Federal Housing Finance Agency (FHFA) in line with the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 and the FHFA new product regulation at 12 CFR part 1253.

A new product does not include: (a) the automated loan underwriting system of an Enterprise in existence as of July 30, 2008, including any upgrade to the technology, operating system, or software to operate the underwriting system; and (b) any modification to the mortgage terms and conditions or mortgage underwriting criteria relating to the mortgages that are purchased or guaranteed by the Enterprise, provided that such modifications do not alter the underlying transaction so as to include services or financing, other than residential mortgage financing; or (c) any activity that is substantially similar to the activities described in (a) and (b).

3. *Expanded activity or product.* In general, a significant expansion of an activity or product constitutes an expanded existing activity or product, subject to a submission requirement for a safety and soundness review, if it fits one or more of the following criteria:

- expanded scope of an activity or product, including a significant increase in size, in risk levels (credit, interest rate, market or operational) or a significant change in activity or product limits or marketing;
- movement from a pilot program or product test to a fully deployed activity or product; or
- such other criteria as provided in writing by the Director.

4. *Consultation with FHFA.* Prior to submitting a NNA, an Enterprise may seek clarification that while an initiative meets one or more of the criteria for an expanded activity or product, the change does not meet a level of significance to justify filing a NNA or presents timing concerns that are not addressed under procedures set forth below.

B. Exemptions

The exemptions from submitting a NNA included in the definitions provided above do not exempt reporting or other communications to examiners or other offices under separate requests by or reporting requirements of FHFA.

C. Procedures and Content

1. *Submission to FHFA*

(a) *Normal Submission.* Completed notices of new business activities or products, or expansion or alteration of an existing activity or product, should be provided on a NNA to FHFA. If a determination is made that an activity represents a new product and that a public comment period is required, the Director shall so inform the Enterprise as soon as practicable. Unless notified otherwise in writing by FHFA, an Enterprise may not undertake a new activity until more than fifteen (15) business days after a completed notice was submitted to FHFA, or a new product until more than sixty (60) days after a determination that an activity represents a new product.

(b) *Temporary Approval.* An Enterprise may request temporary approval for a new product pursuant to 12 CFR 1253.4(c) upon exigent circumstances that make the delay associated with the 30-day public comment period contrary to the public interest. If an Enterprise requests temporary approval, it shall indicate such request on the NNA along with any supporting information. An Enterprise may request temporary approval for an expanded product or activity where circumstances exist meriting such temporary approval, such as a compelling business need, public interest, judicial order, regulatory directive from another federal agency or other emergency situation. Such request should be made at the time of submitting a NNA.

(c) *Confidentiality.* Information labeled confidential or proprietary contained in a NNA will be considered for such treatment by FHFA pursuant to 12 CFR 1253.5.

(d) *Completing NNA Form.*

(i) Provide a response or comment on every item in the Form. If an item on the Form is not applicable or relevant, state so and briefly explain why.

(ii) Responses or comments should be comprehensive; address all issues contained in an item.

(iii) Provide appropriate supporting documentation. Indicate on the form the number of the supporting item(s) and on the attached item(s) to which requirement the documentation refers.

(iv) If all items are not addressed, or if the information does not provide FHFA with sufficient bases upon which to make a determination, FHFA will not consider the Form received and will not process the Form.

(e) *Submitting the Form*

(i) Submit an electronic copy of the Form and supporting documents to: newproducts@fhfa.gov. Be sure to clearly label supporting documents and reference the item(s) to which they relate; and,

(ii) Submit hard copy of the Form and supporting documents to: Senior Associate
Director for Housing Mission and Goals, Office of Housing Mission and Goals, Federal
Housing Finance Agency, 1700 G Street, NW., Fourth Floor, Washington, DC 20552.



D. Supplemental Instructions

Name of Proposed Activity/New Product	Insert the name by which the Enterprise refers to the proposed new activity/new product.
Item 1	<p>The indication that a new activity is or is not a new product should include detailed information in support of such a determination. Reference should be made to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended, and to FHFA regulation on new products. Such supporting information should include a legal analysis and supporting historical information. Even if a new product determination has been previously made by FHFA, the Enterprise should note such determination and why the new activity does or does not fit within such prior determination as well as whether there are safety and soundness or charter matters that require additional consideration for the Enterprise to offer such activity or product.</p> <p>The description should address the factors the Director may consider when determining whether a new activity is “substantially similar” to the activities described in 12 USC 4541(e)(1)(A) and (B) or other activities that have been previously approved in accordance with 12 USC 4541 which include: (1) if the activity in question is a product; (2) whether the new activity is authorized under the Charter Act (Fannie Mae) or Corporation Act (Freddie Mac); (3) whether the activity in question represents an upgrade to the way an approved product is delivered; (4) whether the activity in question poses a significant change in risk to the Enterprise or mortgage finance system from a previously approved product or activity; (5) whether the activity in question involves a significant change in terms, conditions, or limitations expressly contained in any prior approval granted under this part; (6) whether the activity in question poses a significant change in its effect on the public interest compared to a previously approved product or activity; (7) the tradeoff between any combinations of changes in risk, public interest, and safety and soundness; (8) whether the activity in question is likely to require the dedication of significantly more Enterprise resources; (9) whether the activity in question requires approval by regulators other than FHFA; (10) whether the activity in question involves new classes or types of borrowers, investors, or counterparties or new classes or types of collateral; or (12) such other factors as FHFA determines appropriate.</p>

Instructions for the Notice of New Activity Form (FHFA Form # 071) (06/2009)

Item 5	Information about the management structure should include names and titles. Organizational charts should be attached. Staffing plans should indicate authorized and on-board levels as of a stated date.
Item 6	The description should address the factors the Director may consider when determining whether the proposed new activity is in the public interest. These factors include: (1) the degree to which the proposed new activity might reasonably be expected to advance any of the four charter purposes of Fannie Mae or Freddie Mac; (2) the degree to which the activity serves underserved markets as set forth at 12 USC 4565; (3) the degree to which the activity is being supplied or could be supplied by non-government-sponsored-enterprise firms; (4) other alternatives for providing the service to the market; (5) the degree to which the new activity promotes competition in the marketplace or, to the contrary, would result in less competition and greater concentration of economic activity or risk; (6) the degree to which Enterprise provision of the service overcomes natural market barriers or inefficiencies; (7) the degree to which Enterprise provision of the activity might raise or mitigate systemic risks to mortgage and financial markets; (8) the degree to which the activity furthers fair housing; and (9) such other factor determined appropriate by FHFA.
Item 8	This includes applications for patents, and requires copies of correspondence FROM the Enterprise TO other regulators or foreign governments. "Foreign governments" includes agencies and regulatory bodies of foreign governments.
Item 15	The description should indicate whether and the extent to which the proposed new activity increases or decreases risk for each risk component (credit, market, model, governance (including reputation), and operational risk).

The instructions provided here and the information required by the FHFA Notice of New Activity Form may be modified by FHFA from time to time, and written notice will be provided in advance to the Enterprises of any such modification.

	FEDERAL HOUSING FINANCE AGENCY	NNA NUMBER ASSIGNED NNA-F-  -200 <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/>
12 CFR Part 1253 – Appendix NOTICE OF NEW ACTIVITY FORM SEE INSTRUCTIONS FOR INFORMATION REQUIRED TO BE SUPPLIED ON THIS FORM		

Enterprise: _____

Purpose of the Proposed New Activity/New Product/Expanded Activity Submission

The Notice of New Activity (NNA) submission addresses two functions of the Federal Housing Finance Agency—it provides information on activities that may constitute a new product or new activity under the Housing and Economic Recovery Act of 2008 (12 USC 4541) and on activities that do not constitute a new product subject to the approval provisions of the law, but represent an activity that merits safety and soundness review under multiple provisions of the Federal Housing Enterprises Financial Safety and Soundness Act (12 USC 4501 et seq.)

Once the submission is made, FHFA will first determine if the activity is a new product and will direct consideration of such product under the provisions of the statute and regulation, which may involve public comment. If the new activity is determined not to be a new product, then the information contained in the submission will be employed by FHFA for a review of safety and soundness matters as part of its routine supervisory program.

Enterprise Contact Information:

Name:
 Title:
 Telephone Number:
 Email Address:

Name of the Proposed New Activity/New Product/Expanded Activity:

Description of the Proposed New Activity/New Product/Expanded Activity:

1. *Description of Activity/New Product.* Provide a complete and specific description of the proposed new activity, and provide the Enterprise's view of why this proposed new activity should or should not be considered a new product.

(For example, explain why an activity relates to an upgrade of the automated underwriting system in existence as of July 30, 2008, relates to a modification to mortgage terms and conditions without altering the underlying transaction or relates to any activity substantially similar to any existing activity, as provided under 12 USC 4541(e) and 12 CFR Part 1253).

[If the activity is considered a new product, insure that any information the Enterprise feels should not be made public is so designated with an explanation for such designation. Also, if the activity is considered a new product, please provide the Enterprise's view on whether the new product should be considered for temporary approval.]

NOTE: the term "new activity" as employed here, encompasses "new product." Also see definition of "new activity" in 12 CFR 1253.2.

2. *Business Rationale and intended market.* Describe the business rationale for the proposed new activity. If the proposed new activity represents a business line for the Enterprise, describe the business line, and the rationale for the business line, and what products are being offered or proposed to be offered under such business line. Also describe the intended market for the proposed activity, including any market research performed relating to the proposed activity.
3. *Unusual or Unique Characteristics.* Describe any unusual or unique characteristics of the activity, including those involving reputation risks.
4. *Projected Size and Start Date of the New Activity.* State the anticipated commencement date for the proposed new activity. Describe and provide analysis, including assumptions, development expenses, expectations for the impact of and projections for the projected quarterly size (for example, in terms of cost, personnel, volume of activity, or risk metrics) of the proposed new activity for the first 12 quarterly periods of deployment and projected profit and loss..
5. *Units and Personnel with Responsibility over the New Activity.* Describe the Enterprise business units(s) involved in conducting the proposed new activity, including any non-Enterprise affiliation or subsidiary relationships, and the roles of each. Describe the management structure, including proposed manager(s) of the proposed new activity; reporting lines, planned oversight, and review of the activity; and proposed staffing for the activity.
6. *Impact on Public Interest.* Describe the impact of the proposed new activity on the public interest compared to a previously approved activity. Provide sufficient information to address the factors the Director may consider when determining whether the proposed activity is in the public interest, including: (1) the degree to which the proposed product might reasonably be expected to advance any of the four charter purposes of Fannie Mae or Freddie Mac; (2) the degree to which the proposed product serves underserved markets

as set forth at 12 USC 4565; (3) the degree to which the proposed product is being supplied or could be supplied by non-government-sponsored-enterprise firms; (4) other alternatives for providing the service to the market; (5) the degree to which Enterprise provision of the service overcomes natural market barriers or inefficiencies; (6) the degree to which Enterprise provision of the proposed product might raise or mitigate systemic risks to mortgage and financial markets; and (7) the degree to which the proposed product furthers fair housing.

7. *Legal Analysis.* Provide a legal opinion on whether the proposed activity complies with the Enterprise's authorizing statute, does or does not constitute a new product and other legal matters relating to the deployment and offering of the new product.. Provide copies of legal opinions from in-house or outside counsel relating to the Enterprise's proposed activity. If the Enterprise is relying on the "necessary and incidental" authority, describe in detail how the proposed new activity is necessary and incidental to one or more specific charter authorities. Legal analysis should include other non-charter compliance matters. If legal analysis was provided for a similar activity such analysis may be appended with such additional analysis as is appropriate.
8. *Other Regulatory Applications.* Provide copies of all notice and/or application documents— including any application for patents— the Enterprise has submitted to other regulators (federal, state or local) or to foreign governments relating to the proposed new activity. Include all presentation documents, correspondence with the regulator or government pertaining to the application or notice, and all decisional documents issued by the regulator or foreign government.
9. *Relationships with non-secondary market participants.* Describe the extent to which the proposed new activity includes relationships with non-secondary market participants, including, but not limited to: borrowers, real estate brokers, housing counselors, mortgage brokers and government officials.
10. *Business Requirements.* Describe any business requirements for the proposed new activity, including for example, data processing systems, accounting systems, performance tracking systems, and interface capacity with other Enterprise systems and departments.
11. *Acquisition.* If an acquisition is involved, describe the financial features of the transaction and provide pro forma financials of the acquiree.
12. *Accounting Treatment.* Explain whether the proposed new activity is expected to have an accounting effect; explain any accounting treatment proposed for the new activity.
13. *Tax Implications.* Describe the anticipated tax impact of the proposed new activity, and provide analysis, including assumptions, expectations for the impact of, and projections for tax liabilities (credits) associated with the proposed new activity on a quarterly basis for the first 12 quarterly periods of the new activity's commencement.

14. *Earnings and Capital Implications.* Describe, explain and provide analysis, including assumptions, expectations for the impact of, and projections for the anticipated impact to earnings and capital of the proposed new activity on a quarterly basis for the first 12 quarterly periods of the new activity's commencement.
15. *Risk Implications.* Describe the impact of the proposed new activity on the risk profile of the Enterprise and on the mortgage finance system from a previously approved activity. Provide sufficient information to document whether the impact represents a material change to the Enterprise's risk profile.
16. *Performance reports and Risk Controls.* Describe the type of information that will be contained in the routine reports that will be generated to capture the performance of the proposed activity, and include prototype of such performance reports. Describe any and all routine and special controls in place or planned to be put in place for the proposed new activity. Include in the description: operational risk controls; credit risk controls; market risk controls; model risk controls; and governance (including reputation) risk controls. To the extent possible, quantify the risks associated with the proposed activity.
17. *Other Safety and Soundness Implications.* Describe how the proposed new activity is consistent with the safety and soundness of the Enterprise and the mortgage finance and financial system. Include information about the process the Enterprise went through to develop the proposed new activity and to obtain necessary internal approvals (including at the executive level, the executive committee level and/or Board of Directors level). Provide copies of any: presentations made to executives, executive committees or Board of Directors; minutes of meetings at which such presentations were made; and decision documents. FHFA will automatically consider such Board presentations, minutes, and decisions documents for confidential treatment under 12 CFR 1253.5.

CERTIFICATION:

To the best of my knowledge and belief, the information contained in this filing, including any supporting materials, contains no material misrepresentations or omissions, is true, correct and complete.

Signed: _____

Print Name: _____

Title: _____

Date: _____

SUBCHAPTER D—FEDERAL HOME LOAN BANKS

PART 1261—FEDERAL HOME LOAN BANK DIRECTORS

Subpart A—Federal Home Loan Bank Boards of Directors: Eligibility and Elections

Sec.

- 1261.1 Definitions.
- 1261.2 General provisions.
- 1261.3 Designation of member directorships.
- 1261.4 Director eligibility.
- 1261.5 Determination of member votes.
- 1261.6 Nominations for member and independent directorships.
- 1261.7 Election process.
- 1261.8 [Reserved]
- 1261.9 Actions affecting director elections.
- 1261.10 Independent director conflict of interests.
- 1261.11 Conflict-of-interests policy for Bank directors.
- 1261.12 Reporting requirements for Bank directors.
- 1261.13 Ineligible Bank directors.
- 1261.14 Vacant Bank directorships.
- 1261.15 Minimum number of member directorships.
- 1261.16 [Reserved]

Subpart B—Federal Home Loan Bank Directors' Compensation and Expenses [Reserved]

Subpart C [Reserved]

AUTHORITY: 12 U.S.C. 1426, 1427, 1432, 4511 and 4526.

SOURCE: 73 FR 55715, Sept. 26, 2008, unless otherwise noted.

Subpart A—Federal Home Loan Bank Boards of Directors: Eligibility and Elections

§ 1261.1 Definitions.

As used in this Subpart A:

Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449).

Bank, written in title case, means a Federal Home Loan Bank established under section 12 of the Act (12 U.S.C. 1432).

Bona fide resident of a Bank district means an individual who:

- (1) Maintains a principal residence in the Bank district; or

- (2) If serving as an independent director, owns or leases in his or her own name a residence in the Bank district and is employed in a voting state in the Bank district.

Director means the Director of the Federal Housing Finance Agency.

FHFA means Federal Housing Finance Agency.

FHFA ID number means the number assigned to a member by FHFA and used by FHFA and the Banks to identify a particular member.

Independent directorship means a directorship, as defined by section 7(a)(4)(A) of the Act, 12 U.S.C. 1427(a)(4)(A), that is filled by a plurality vote of the members at large by an individual having the qualifications specified by section 7(a)(3)(B)(i) or (ii), 12 U.S.C. 1427(a)(3)(B)(i) or (ii).

Member directorship means a directorship, as defined by section 7(a)(4)(A) of the Act, 12 U.S.C. 1427(a)(4)(A), that is filled by a plurality vote of the members located in a particular State by an individual who is an officer or director of a member located in that State, and includes guaranteed directorships and stock directorships.

Method of equal proportions means the mathematical formula used by FHFA to allocate member directorships among the States in a Bank's district based on the relative amounts of Bank stock required to be held as of the record date by members located in each State.

Public interest director means an individual serving in a public interest directorship.

Public interest directorship means an independent directorship filled by an individual with more than four years experience representing consumer or community interests in banking services, credit needs, housing or consumer financial protections.

Record date means December 31 of the calendar year immediately preceding the election year.

Stock directorship means a member directorship that is designated by FHFA as representing the members located in a particular voting State based on the amount of Bank stock required to be

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held by the members in that State as of the record date, other than a guaranteed directorship.

Voting State means the District of Columbia, Puerto Rico, or the State of the United States in which a member's principal place of business, as determined in accordance with 12 CFR part 925, or any successor provision, is located as of the record date. The voting State of a member with a principal place of business located in the U.S. Virgin Islands as of the record date is Puerto Rico, and the voting State of a member with a principal place of business located in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands as of the record date is Hawaii.

[73 FR 55715, Sept. 26, 2008, as amended at 74 FR 51460, Oct. 7, 2009]

§ 1261.2 General provisions.

(a) *Board size and composition.* Annually, the FHFA Director will determine the size of the board of directors for each Bank and will designate at least a majority, but no more than 60 percent, of the directorships as member directorships and the remainder as independent directorships. Annually, the board of directors of each Bank shall determine how many, if any, of the independent directorships with terms beginning the following January 1 shall be public interest directorships, ensuring that at all times the Bank will have at least two public interest independent directorships.

(b) *Term of directorships.* The term of office of each directorship commencing on or after January 1, 2009 shall be four years, except as adjusted pursuant to section 7(d) of the Act (12 U.S.C 1427(d)) to achieve a staggered board, and shall commence on January 1 of the calendar year so designated by FHFA.

(c) *Annual elections.* Each Bank annually shall conduct an election the purpose of which is to fill all directorships designated by FHFA as commencing on January 1 of the calendar year immediately following the year in which such election is commenced. Subject to the provisions of the Act and in accordance with the requirements of this subpart, the disinterested members of the board of directors of each Bank, or a committee of disinterested directors,

shall administer and conduct the annual election of directors. In so doing, the disinterested directors may use Bank staff or independent contractors to perform ministerial and administrative functions concerning the elections process.

(d) *Location of members.* In accordance with section 7(c) of the Act (12 U.S.C 1427(c)), for purposes of the election of member directors, a member is deemed to be located in its voting state, unless otherwise designated by the Director.

(e) *Dates.* If any date specified in this part for action by a Bank, or specified by a Bank pursuant to this part, falls on a Saturday, Sunday, or Federal holiday, the relevant time period is deemed to be extended to the next calendar day that is not a Saturday, Sunday, or Federal holiday.

[73 FR 55715, Sept. 26, 2008, as amended at 74 FR 51460, Oct. 7, 2009]

§ 1261.3 Designation of member directorships.

(a) *Determination of voting stock.* (1) On or before April 10 of each year, each Bank shall deliver to FHFA a capital stock report that indicates, as of the record date, the number of members located in each voting State in the Bank's district, the number of shares of Bank stock that each member (identified by its FHFA ID number) was required to hold, and the number of shares of Bank stock that all members located in each voting State were required to hold. If a Bank has issued more than one class of stock, it shall report the total shares of stock of all classes required to be held by the members. The Bank shall certify to FHFA that, to the best of its knowledge, the information provided in the capital stock report is accurate and complete, and that it has notified each member of its minimum capital stock holding requirement as of the record date.

(2) If a Bank's capital plan was not in effect as of the record date, the number of shares of Bank stock that any member was required to hold as of the record date shall be determined in accordance with 12 CFR 925.20 and 925.22, or any successor provisions. If a Bank's capital plan was in effect as of the record date, the number of shares of

Federal Housing Finance Agency.

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Bank stock that any member was required to hold as of the record date shall be determined in accordance with the minimum investment established by the capital plan for that Bank; however, for any member whose Bank stock is less than the minimum investment during a transition period, the amount of Bank stock to be reported shall be the number of shares of Bank stock actually owned by the member as of the record date.

(b) *Designation of member directorships as stock directorships.* Using the method of equal proportions, the Director annually will conduct a designation of member directorships for each Bank based on the number of shares of Bank stock required to be held by the members in each State as of December 31 of the preceding calendar year. If a Bank has issued more than one class of stock, the Director will designate the directorships for each State in that Bank district based on the combined number of shares required to be held by the members in that State. For purposes of conducting the designation, if a Bank's capital plan was not in effect on the immediately preceding December 31, the number of shares of Bank stock required to be held by members as of that date shall be determined in accordance with 12 CFR 925.20 and 925.22, or any successor provisions. If a Bank's capital plan was in effect on the immediately preceding December 31, the number of shares of Bank stock required to be held by members as of that date shall be determined in accordance with the minimum investment established by such capital plan; however, for any members whose Bank stock is less than the minimum investment during a transition period, the amount of stock to be used in the designation of directorships shall be the number of shares of Bank stock actually owned by those members as of that December 31. In all cases, the Director will designate the directorships by using the information provided by each Bank in its capital stock report required by paragraph (a)(1) of this section.

(c) *Allocation of directorships.* The member directorships designated by the Director will be allocated among the States by the Director in accord-

ance with section 7(b) and (c) of the Act.

(d) *Notification.* On or before June 1 of each year, FHFA will notify each Bank in writing of the total number of directorships established for the Bank and the number of member directorships designated as representing the members in each voting State in the Bank district. If the annual designation of member directorships results in an existing directorship being redesignated as representing members in a different State, the directorship shall be deemed to become vacant as of December 31 of that year, and the notice shall state that the directorship will be filled by the board of directors of the Bank with an eligible individual who is an officer or director of a member located in the newly designated State.

[74 FR 51460, Oct. 7, 2009]

§ 1261.4 Director eligibility.

(a) *Eligibility requirements for member directors.* Each member director, and each nominee to a member directorship, shall be:

- (1) A citizen of the United States; and
- (2) An officer or director of a member that is located in the district in which the Bank is located and that meets all minimum capital requirements established by its appropriate Federal banking agency or appropriate State regulator. In the case of a director elected by the members, the institution of which the director is an officer or director must have been a member as of the record date. In the case of a director elected by a Bank's board of directors to fill a vacancy, the institution of which the director is an officer or director must be a member at the time the board acts.

(b) *State designation for member directors.* Each member director, and each nominee to a member directorship, shall be an officer or director of a member that is located in the State to which the Director has allocated such directorship under § 1261.3(c).

(c) *Eligibility requirements for independent directors.* Each independent director, and each nominee to an independent directorship, shall be:

- (1) A citizen of the United States; and
- (2) A bona fide resident of the district in which the Bank is located.

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(d) *Restrictions.* (1) A nominee is not eligible if he or she:

(i) Is an incumbent director, unless:

(A) The incumbent director's term of office would expire before the new term of office would begin; and

(B) The new term of office would not be barred by the term limit provision of section 7(d) of the Act (12 U.S.C. 1427(d)); or

(ii) Is a former director whose service would be barred by the term limit provision of section 7(d) of the Act.

(2) For purposes of applying the term limit provision of section 7(d) of the Act (12 U.S.C. 1427(d)):

(i) A term of office that is adjusted after July 30, 2008 to a period of fewer than four years shall not be deemed to be a full term;

(ii) Any member director's election and service to a directorship with a three year term of office prior to July 30, 2008 shall be deemed to be a full term;

(iii) Any three-year term of office that ends immediately before a term of office that is adjusted after July 30, 2008 to a period of fewer than four years, and any term of office commencing immediately following such adjusted term of office, shall constitute consecutive full terms of office; and

(iv) Any period of time served by a director who has been elected by the board of directors to fill a vacancy shall not be deemed to constitute a full term.

(e) *Loss of eligibility.* (1) A director shall become ineligible to remain in office if, during his or her term of office, the directorship to which he or she has been elected is eliminated or, with respect to a member directorship, is redesignated by FHFA as representing members located in another State, in accordance with §1261.3(c). The incumbent director shall become ineligible after the close of business on December 31 of the year in which the directorship is redesignated or eliminated. Any directorship ceasing through elimination or redesignation shall not be deemed to be a full-term directorship for purposes of this section.

(2) In the case of a redesignation to another State, the redesignated directorship shall be filled by a majority

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vote of the remaining Bank directors, in accordance with §1261.14(a).

[73 FR 55715, Sept. 26, 2008, as amended at 74 FR 51461, Oct. 7, 2009]

§ 1261.5 Determination of member votes.

(a) *In general.* Each Bank shall determine, in accordance with this section, the number of votes that each member of the Bank may cast for each directorship that is to be filled by the vote of the members.

(b) *Number of votes.* For each member directorship and each independent directorship that is to be filled in an election, each member shall be entitled to cast one vote for each share of Bank stock that the member was required to hold as of the record date. Notwithstanding the preceding sentence, the number of votes that any member may cast for any one directorship shall not exceed the average number of shares of Bank stock required to be held as of the record date by all members located in the same State as of the record date. If a Bank has issued more than one class of stock, it shall calculate the average number of shares separately for each class of stock, using the total number of members in a State as the denominator, and shall apply those limits separately in determining the maximum number of votes that any member owning that class of stock may cast in the election. If a Bank's capital plan was not in effect as of the record date, the number of shares of Bank stock that a member was required to hold as of the record date shall be determined in accordance with 12 CFR 925.20 and 925.22, or any successor provisions. If a Bank's capital plan was in effect as of the record date, the number of shares of Bank stock that a member was required to hold as of the record date shall be determined in accordance with the minimum investment requirement established by the Bank's capital plan; however, for any member whose Bank stock is less than the minimum investment during a transition period, the amount of Bank stock to be used shall be the number of shares of Bank stock actually owned by the member as of the record date.

(c) *Voting preferences.* If the board of directors of a Bank includes any voting preferences as part of its approved capital plan, those preferences shall supersede the provisions of paragraph (b) of this section that otherwise would allow a member to cast one vote for each share of Bank stock it was required to hold as of the record date. If a Bank establishes a voting preference for a class of stock, the members with voting rights shall remain subject to the provisions of section 7(b) of the Act (12 U.S.C. 1427(b)) that prohibit any member from casting any vote in excess of the average number of shares of stock required to be held by all members in its state.

[73 FR 55715, Sept. 26, 2008, as amended at 74 FR 51461, Oct. 7, 2009]

§ 1261.6 Nominations for member and independent directorships.

(a) *Election announcement.* Within a reasonable time in advance of an election, a Bank shall notify each member in its district of the commencement of the election process. Such notice shall include:

(1) The number of member directorships designated for each voting state in the Bank district and the number of independent directorships for the Bank;

(2) The name of each incumbent Bank director, the name and location of the member at which each member director serves, and the name and location of the organization with which each independent director is affiliated, if any, and the expiration date of each Bank director's term of office;

(3) A brief statement describing the skills and experience the Bank believes are most likely to add strength to the board of directors, provided that the Bank previously has conducted the annual assessment permitted by § 1261.9 and the Bank has elected to provide the results of the assessment to the members;

(4) An attachment indicating the name, location, and FHFA ID number of every member in the member's voting state, and the number of votes each such member may cast for each directorship to be filled by such members, as determined in accordance with § 1261.5; and

(5) If a member directorship is to be filled by members in a State, a nominating certificate for those members.

(b) *Member directorship nominations.*

(1) Any member that is entitled to vote in the election may nominate an eligible individual to fill each available member directorship for its voting state by delivering to its Bank, prior to a deadline to be established by the Bank and set forth in the notice required in paragraph (a) of this section, a nominating certificate duly adopted by the member's governing body or by an individual authorized by the member's governing body to act on its behalf.

(2) The nominating certificate shall include the name of the nominee and the name, location, and FHFA ID number of the member the nominee serves as an officer or director.

(3) The Bank shall establish a deadline for delivery of nominating certificates, which shall be no earlier than 30 calendar days after the date on which the Bank delivers the notice required by paragraph (a) of this section, and the Bank shall not accept certificates received after that deadline. The Bank shall retain all accepted nominating certificates for at least two years after the date of the election.

(c) *Accepting member directorship nominations.* Promptly after receipt of any nominating certificate, a Bank shall notify in writing any individual nominated for a member directorship. An individual may accept the nomination only by delivering to the Bank, prior to a deadline established by the Bank and set forth in its notice, an executed director eligibility certification form prescribed by FHFA. A Bank shall allow each nominee at least 30 calendar days after the date the Bank delivered the notice of nomination within which to deliver the executed form. A nominee may decline the nomination by so advising the Bank in writing, or by failing to deliver a properly executed director eligibility certification form prior to the deadline. Each Bank shall retain all information received under this paragraph for at least two years after the date of the election.

(d) *Independent directorship nominations.* (1) Any individual who seeks to be an independent director of the board

of directors of a Bank may deliver to the Bank, on or before the deadline set by the Bank for delivery of nominating certificates, an executed independent director application form prescribed by FHFA that demonstrates that the individual both is eligible and has either of the following qualifications:

(i) More than four years experience representing consumer or community interests in banking services, credit needs, housing, or consumer financial protections; or

(ii) Knowledge of or experience in one or more of the areas set forth in paragraph (e) of this section.

(2) Any other interested party may recommend to the Bank that it consider a particular individual as a nominee for an independent directorship, but the Bank shall not nominate any individual unless the individual has delivered to the Bank, on or before the date the Bank has set for delivery of nominating certificates, an executed independent director application form prescribed by FHFA. The application form prescribed by FHFA will provide a means by which an individual can indicate an intent to be considered for a public interest directorship. The board of directors of the Bank may consider any individual for any independent directorship nomination, provided it has determined that the individual is eligible and qualified, but the board shall nominate for a public interest directorship only an individual who indicates on the application form a desire to be considered for a public interest directorship. The board of directors of the Bank shall consult with the Bank's Advisory Council before nominating any individual for any independent directorship. Each Bank shall include in its bylaws the procedures it intends to use for the nomination and election of the independent directors, and shall retain all information received under this paragraph for at least two years after the date of the election.

(3) Each Bank shall determine the number of public interest directorships to be included among its authorized independent directorships, provided that each Bank shall at all times have at least two such directorships, and shall announce that number to its members in the notice required by

paragraph (a) of this section. In submitting nominations to its members, each Bank shall nominate at least as many individuals as there are independent directorships to be filled in that year's election.

(e) *Independent director qualifications.*

(1) Each independent director and each nominee for an independent directorship, other than a public interest directorship, shall have experience in, or knowledge of, one or more of the following areas: auditing and accounting, derivatives, financial management, organizational management, project development, risk management practices, and the law. Before nominating any individual for an independent directorship, other than a public interest directorship, the board of directors of a Bank shall determine that such knowledge or experience of the nominee is commensurate with that needed to oversee a financial institution with a size and complexity that is comparable to that of the Bank.

(2) Each public interest independent director and each nominee for a public interest directorship shall have more than four years experience representing consumer or community interests in banking services, credit needs, housing or consumer financial protection.

(f) *Eligibility verification.* Using the information provided on member director eligibility forms prescribed by FHFA, each Bank shall verify that each nominee for each member directorship meets all the eligibility requirements for such directorship. Using the information provided on independent director application forms prescribed by FHFA, each Bank shall verify that each nominee for each public interest independent directorship and each other independent directorship meets all eligibility requirements and any knowledge or experience qualifications for such directorship, as set forth in the Act and this subpart. Before announcing any independent director nominee, the Bank shall deliver to FHFA, for the Director's review, a copy of the independent director application forms executed by the individuals nominated for independent directorships. If within two weeks of such delivery FHFA provides comments to the Bank

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on any independent director nominee, the board of directors of the Bank shall consider the FHFA's comments in determining whether to proceed with those nominees or to reopen the nomination.

[73 FR 55715, Sept. 26, 2008, as amended at 74 FR 51461, Oct. 7, 2009]

§ 1261.7 Election process.

(a) *Ballots.* Promptly after fulfilling the requirements of § 1261.6(f), each Bank shall prepare and deliver a ballot to each member that was a member as of the record date. The Bank shall include with each ballot a closing date for the Bank's receipt of voted ballots, which date shall be no earlier than 30 calendar days after the date such ballot is delivered to the member.

(i) For states in which one or more member directorships are to be filled in the election, an alphabetical listing of the names of each nominee for such directorship, the name, location, and FHFA ID number of the member each nominee serves, the nominee's title or position with the member, and the number of member directorships to be filled by the members in that voting state in the election;

(ii) An alphabetical listing of the names of each nominee for a public interest independent directorship and a brief description of each nominee's experience representing consumer and community interests;

(iii) An alphabetical listing of the names nominee for the other independent directorships and a brief description of each nominee's qualifications, including his or her knowledge or experience in the areas of financial management, auditing and accounting, risk management practices, derivatives, project development, organizational management and any other area of knowledge or experience set forth in § 1261.6(e);

(iv) A statement that write-in candidates are not permitted; and

(v) A confidentiality statement prohibiting the Bank from disclosing how any member voted.

(2) At the election of the Bank, a ballot also may include, in the body or as an attachment, a brief description of the skills and experience of each nominee for a member directorship.

(b) *Statement on skills and experience.* If a Bank has conducted an annual assessment permitted by § 1261.9 and has included the results of the assessment as part of the notice to members required in § 1261.6(a), it may include with each ballot a statement of the results of that assessment or any subsequent assessment. If the statement differs from the statement provided under § 1261.6(a)(3), the Bank also shall include an explanation of why the statements differ.

(c) *Lack of member directorship nominees.* If, for any voting State, the number of nominees for the member directorships for that State is equal to or fewer than the number of such directorships to be filled in that year's election, the Bank shall deliver a notice to the members in the affected voting State (in lieu of including any member directorship nominees on the ballot for that State) that such nominees shall be deemed elected without further action, due to an insufficient number of nominees to warrant balloting. Thereafter, the Bank shall declare elected all such eligible nominees and in doing so shall designate particular nominees to guaranteed directorships or stock directorships, respectively, if necessary. The nominees declared elected shall be included as directors-elect in the report of election required under paragraph (g) of this section. Any member directorship that is not filled due to a lack of nominees shall be deemed vacant as of January 1 of the following year and shall be filled by the Bank's board of directors in accordance with § 1261.14(a).

(d) *Voting.* For each directorship to be filled, a member may cast the number of votes determined by the Bank pursuant to § 1261.5. A member may not split its votes among multiple nominees for a single directorship, and, where there are multiple directorships to be filled, either within the member's voting state or at large, in the case of independent directorships, a member may not cumulatively vote for a single nominee. If any member votes, it shall by resolution of its governing body either authorize the voting for specific nominees or delegate to an individual the authority to vote for specific nominees. To vote, a member shall:

(1) Mark on the ballot the name of not more than one of the nominees for each directorship to be filled. Each nominee so selected shall receive all of the votes that the member is entitled to cast.

(2) Execute and deliver the ballot to the Bank on or before the closing date. A Bank shall not allow a member to change a ballot after it has been delivered to the Bank.

(e) *Counting ballots.* A Bank shall not review any ballot until after the closing date, and shall not include in the election results any ballot received after the closing date. Promptly after the closing date, each Bank shall tabulate the votes cast in the election: for the member directorships, the Bank shall tabulate votes by each voting state; for the independent directorships, the Bank shall tabulate votes for the district at-large. Any ballots cast in violation of paragraph (d) of this section shall be void.

(f) *Declaring results.* (1) *For member directorships.* The Bank shall declare elected the nominee receiving the highest number of votes. If more than one member directorship is to be filled for a particular State, the Bank shall declare elected each successive nominee receiving the next highest number of votes until all such open directorships are filled.

(2) *For independent directorships.* (i) The bank shall tabulate separately the votes received for public interest independent director nominees and those received for other independent director nominees, in each case in accordance with paragraph (f)(2)(ii) of this section.

(ii) If the number of nominees exceeds the number of directorships to be filled, the Bank shall declare elected the nominee receiving the highest number of votes. If more than one directorship is to be filled, the Bank shall declare elected each successive nominee receiving the next highest number of votes for such directorship until all such open directorships are filled.

(iii) If the number of nominees is no more than the number of directorships to be filled, the Bank shall declare elected each nominee receiving at least 20 percent of the number of votes eligible to be cast in the election. If any di-

rectorship is not filled due to any nominee's failure to receive at least 20 percent of the votes eligible to be cast, the Bank shall continue the election process for that directorship under the procedures in paragraph (h) of this section.

(3) *Tie votes.* In the event of a tie for the last available directorship, the disinterested incumbent members of the board of directors of the Bank, by a majority vote, shall declare elected one of the nominees for whom the number of votes cast was tied.

(4) *Eligibility.* A Bank shall not declare elected a nominee that it has reason to know is ineligible to serve, nor shall it seat a director-elect that it has reason to know is ineligible to serve.

(5) *Record retention.* The Bank shall retain all ballots it receives for at least two years after the date of the election, and shall not disclose how any member voted.

(g) *Report of election.* Promptly following the election, each Bank shall deliver a notice to its members, to each nominee, and to FHFA that contains the following information:

(1) For each member directorship, the name of the director-elect, the name and location of the member at which he or she serves, his or her title or position at the member, the voting State represented, and the expiration date of the term of office;

(2) For each independent directorship, the name of the director-elect, whether the director-elect will fill a public interest directorship and, if so, the consumer or community interest represented by such directorship, any qualifications under §1261.6(e), and the expiration date of the term of office;

(3) For member directorships, the total number of eligible votes, the number of members voting in the election, and the total number of votes cast for each nominee, which shall be reported by State; and

(4) For independent directorships, the total number of eligible votes, the number of members voting in the election, and the total number of votes cast for each nominee, which shall be reported for the district at large.

(h) *Failure to fill all independent directorships.* If any independent directorship is not filled due to the failure of

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any nominee to receive at least 20 percent of the eligible vote, the Bank shall continue the election process for that directorship under the following procedures:

(1) The Bank's board of directors, after again consulting with the Bank's Advisory Council, shall nominate at least as many individuals as there are independent directorships to be filled. It may nominate individuals who failed to be elected in the initial vote. The Bank thereafter shall deliver to FHFA a copy of the independent director application form executed by each nominee.

(2) The Bank then shall follow the provisions in this section that are applicable to the election process for independent directors, except for the following:

(i) The Bank shall not place the name of any nominee on a ballot without prior approval of FHFA; and

(ii) The Bank may adopt a closing date that is earlier than 30 calendar days after delivery of the ballots to the eligible voting members, provided the Bank determines that an earlier closing date provides a reasonable amount of time to vote the ballots.

[73 FR 55715, Sept. 26, 2008, as amended at 74 FR 51462, Oct. 7, 2009]

§ 1261.8 [Reserved]

§ 1261.9 Actions affecting director elections.

(a) *Banks.* Each Bank, acting through its board of directors, may conduct an annual assessment of the skills and experience possessed by the members of its board of directors as a whole and may determine whether the capabilities of the board would be enhanced through the addition of individuals with particular skills and experience. If the board of directors determines that the Bank could benefit by the addition to the board of directors of individuals with particular qualifications, such as auditing and accounting, derivatives, financial management, organizational management, project development, risk management practices, or the law, it may identify those qualifications and so inform the members as part of its announcement of elections pursuant to § 1261.6(a).

(b) *Support for nomination or election.*

(1) A Bank director, officer, attorney, employee, or agent, acting in his or her personal capacity, may support the nomination or election of any individual for a member directorship, provided that no such individual shall purport to represent the views of the Bank or its board of directors in doing so.

(2) A Bank director, officer, attorney, employee or agent and the board of directors and Advisory Council (including members of the Council) of a Bank may support the candidacy of any individual nominated by the board of directors for election to an independent directorship.

(c) *Prohibition.* Except as provided in paragraphs (a) and (b) of this section, no director, officer, attorney, employee, or agent of a Bank shall:

(1) Communicate in any manner that a director, officer, attorney, employee, or agent of a Bank, directly or indirectly, supports or opposes the nomination or election of a particular individual for a directorship; or

(2) Take any other action to influence the voting with respect to any particular individual.

[73 FR 55715, Sept. 26, 2008, as amended at 74 FR 51463, Oct. 7, 2009]

[73 FR 55715, Sept. 26, 2008, as amended at 74 FR 51463, Oct. 7, 2009]

§ 1261.10 Independent director conflict of interests.

(a) *Employment interests.* During any independent director's term of service, such director shall not serve as an officer, employee, or director of any member of the Bank on whose board the individual sits, or of any recipient of advances from such Bank, and shall not serve as an officer of any Bank. An independent director or nominee for any independent directorship shall disclose all such interests to the Bank on whose board of directors the individual serves or which is considering the individual for nomination to its board of directors.

(b) *Holding companies.* Service as an officer, employee, or director of a holding company that controls one or more members of, or one or more recipients of advances from, the Bank on whose board an independent director serves is not deemed to be service as an officer,

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employee or director of a member or recipient of advances if the assets of all such members or all such recipients of advances constitute less than 35 percent of the assets of the holding company, on a consolidated basis.

(c) *Attribution.* For purposes of determining compliance with this section, a Bank shall attribute to the independent director any officer position, employee position, or directorship of the director's spouse.

[73 FR 55715, Sept. 26, 2008, as amended at 74 FR 51463, Oct. 7, 2009]

§ 1261.11 Conflict-of-interests policy for Bank directors.

(a) *Adoption of conflict-of-interests policy.* Each Bank shall adopt a written conflict-of-interests policy that applies to all members of its board of directors. At a minimum, the conflict-of-interests policy of each Bank shall:

(1) Require the directors to administer the affairs of the Bank fairly and impartially and without discrimination in favor of or against any member;

(2) Require independent directors to comply with § 1261.10(a);

(3) Prohibit the use of a director's official position for personal gain;

(4) Require directors to disclose actual or apparent conflicts of interests and establish procedures for addressing such conflicts;

(5) Require the establishment of internal controls to ensure that conflict-of-interests reports are made and filed and that conflict-of-interests issues are disclosed and resolved; and

(6) Establish procedures to monitor compliance with the conflict-of-interests policy.

(b) *Disclosure and recusal.* A director shall disclose to the Bank's board of directors any financial interests he or she has, as well as any financial interests known to the director of any immediate family member or business associate of the director, in any matter to be considered by the Bank's board of directors and in any other business matter or proposed business matter involving the Bank and any other person or entity. A director shall disclose fully the nature of his or her interests in the matter and shall provide to the Bank's board of directors any information requested to aid in its consider-

ation of the director's interest. A director shall refrain from considering or voting on any issue in which the director, any immediate family member, or any business associate has any financial interest.

(c) *Confidential Information.* Directors shall not disclose or use confidential information they receive solely by reason of their position with the Bank to obtain any benefit for themselves or for any other individual or entity.

(d) *Gifts.* No Bank director shall accept, and each Bank director shall discourage the director's immediate family members from accepting, any gift that the director believes or has reason to believe is given with the intent to influence the director's actions as a member of the Bank's board of directors, or where acceptance of such gift would have the appearance of intending to influence the director's actions as a member of the board. Any insubstantial gift would not be expected to trigger this prohibition.

(e) *Compensation.* Directors shall not accept compensation for services performed for the Bank from any source other than the Bank for which the services are performed.

(f) *Definitions.* For purposes of this section:

(1) *Immediate family member* means parent, sibling, spouse, child, or dependent, or any relative sharing the same residence as the director.

(2) *Financial interest* means a direct or indirect financial interest in any activity, transaction, property, or relationship that involves receiving or providing something of monetary value, and includes, but is not limited to any right, contractual or otherwise, to the payment of money, whether contingent or fixed. It does not include a deposit or savings account maintained with a member, nor does it include a loan or extension of credit obtained from a member in the normal course of business on terms that are available generally to the public.

(3) *Business associate* means any individual or entity with whom a director has a business relationship, including, but not limited to:

(i) Any corporation or organization of which the director is an officer or

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partner, or in which the director beneficially owns ten percent or more of any class of equity security, including subordinated debt;

(ii) Any other partner, officer, or beneficial owner of ten percent or more of any class of equity security, including subordinated debt, of any such corporation or organization; and

(iii) Any trust or other estate in which a director has a substantial beneficial interest or as to which the director serves as trustee or in a similar fiduciary capacity.

[73 FR 55715, Sept. 26, 2008, as amended at 74 FR 51463, Oct. 7, 2009]

§ 1261.12 Reporting requirements for Bank directors.

(a) *Annual reporting.* Annually, each Bank shall require each of its directors to execute and deliver to the Bank the appropriate director eligibility certification form prescribed by FHFA for the type of directorship held by such director. The Bank promptly shall deliver to FHFA a copy of the certification form delivered to it by each director.

(b) *Report of noncompliance.* At any time that any director believes or has reason to believe that he or she no longer meets the eligibility requirements set forth in the Act or this subpart, the director promptly shall so notify the Bank and FHFA in writing. At any time that a Bank believes or has reason to believe that any director no longer meets the eligibility requirements set forth in the Act or this subpart, the Bank promptly shall notify FHFA in writing.

[74 FR 51463, Oct. 7, 2009]

§ 1261.13 Ineligible Bank directors.

Upon a determination by FHFA or a Bank that any director of the Bank no longer satisfies the eligibility requirements set forth in the Act or this part, or has failed to comply with the reporting requirements of § 1261.12, the directorship shall immediately become vacant. Any director that is determined to have failed to comply with any of these requirements shall not continue to serve as a Bank director. Whenever a Bank makes such a determination,

the Bank promptly shall notify the Bank director and FHFA in writing.

[74 FR 51464, Oct. 7, 2009]

§ 1261.14 Vacant Bank directorships.

(a) *Filling unexpired terms.* (1) When a vacancy occurs on the board of directors of any Bank, the board of directors of the Bank shall elect, by a majority vote of the remaining Bank directors sitting as a board, an individual to fill the unexpired term of office of the vacant directorship, regardless of whether the remaining Bank directors constitute a quorum of the Bank's board of directors.

(2) The board of directors of the Bank may fill an anticipated vacancy prior to the effective date of the vacancy, provided the board does so no sooner than the date of the regularly scheduled board meeting that occurs immediately prior to the effective date of the vacancy.

(3) The board of directors shall elect only an individual who satisfies all the eligibility requirements in the Act and in this subpart that applied to his or her predecessor and, for independent directorships, also satisfies any of the qualifications in the Act or this subpart. If a Bank does not have at least two sitting public interest independent directors, the board of directors of the Bank shall designate the directorship as a public interest directorship and shall elect an individual who satisfies a public interest independent directorship qualification in the Act or in this subpart.

(b) *Verifying eligibility.* Prior to any election by the board of directors, the Bank shall obtain an executed member director eligibility certification form prescribed by FHFA from each individual being considered to fill a member directorship and an executed independent director application form prescribed by FHFA from each individual being considered to fill an independent directorship. Using the executed forms, each Bank shall verify each individual's eligibility and, as to independent directors, also shall verify the individual's qualifications. Before any independent director is elected by the board of directors of a Bank, the Bank shall deliver to FHFA for its review a

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copy of the application form of each individual being considered by the board. The Bank shall retain the information it receives in accordance with paragraphs (c) and (d) of § 1261.6.

(c) *Notification.* Promptly after allowing the individual to assume the directorship, as provided in paragraph (b) of this section, a Bank shall notify FHFA and each member located in the Bank's district in writing of the following:

(1) For each member directorship filled by the board of a Bank, the name of the director, the name, location, and FHFA ID number of the member the director serves, the director's title or position with the member, the voting State that the director represents, and the expiration date of the director's term of office; and

(2) For each independent directorship filled by the board of a Bank, the name of the director, the name and location of the organization with which the director is affiliated, if any, the director's title or position with such organization, and the expiration date of the director's term of office.

[74 FR 51464, Oct. 7, 2009]

§ 1261.15 Minimum number of member directorships.

Except with respect to member directorships of a Bank resulting from the merger of any two or more Banks, the number of member directorships allocated to each state shall not be less than the number of directorships allocated to that state on December 31, 1960. The following list sets forth the states whose members held more than one directorship on December 31, 1960:

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State	Number of elective directorships on December 31, 1960
California	3
Colorado	2
Illinois	4
Indiana	5
Iowa	2
Kansas	3
Kentucky	2
Louisiana	2
Massachusetts	3
Michigan	3
Minnesota	2
Missouri	2
New Jersey	4
New York	4
Ohio	4
Oklahoma	2
Pennsylvania	6
Tennessee	2
Texas	3
Wisconsin	4

§ 1261.16 [Reserved]

Subpart B—Federal Home Loan Bank Directors' Compensation and Expenses [Reserved]

Subpart C [Reserved]

SUBCHAPTER E—HOUSING GOALS AND MISSION

PART 1282—ENTERPRISE HOUSING GOALS AND MISSION

Sec.

Subpart A—General

- 1282.1 Scope of part.
- 1282.2 Definitions.

Subpart B—Housing Goals

- 1282.11 General.
- 1282.12 Low- and Moderate-Income Housing Goal.
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- 1282.16 Special counting requirements.
- 1282.17 Affordability—Income level definitions—family size and income known (owner-occupied units, actual tenants, and prospective tenants).
- 1282.18 Affordability—Income level definitions—family size not known (actual or prospective tenants).
- 1282.19 Affordability—Rent level definitions—tenant income is not known.
- 1282.20 Actions to be taken to meet the goals.
- 1282.21 Notice and determination of failure to meet goals.
- 1282.22 Housing plans.

AUTHORITY: 12 U.S.C. 4501, 4502, 4511, 4513, 4526, 4561(c), 4565(b), 4566, 4603.

SOURCE: 74 FR 39889, Aug. 10, 2009, unless otherwise noted.

Subpart A—General

§ 1282.1 Scope of part.

The Director has general regulatory and supervisory authority over Fannie Mae and Freddie Mac, and is required to make such regulations as are necessary to carry out the Director's duties under the Safety and Soundness Act, the Fannie Mae Charter Act, and the Freddie Mac Act, and to ensure that the purposes of such statutes are accomplished.

§ 1282.2 Definitions.

(a) *Statutory terms.* All terms defined in the Safety and Soundness Act are used in accordance with their statutory meaning unless otherwise defined in paragraph (b) of this section.

(b) *Other terms.* As used in this part, the term—

AHAR means the Annual Housing Activities Report that an Enterprise submits to the Director under section 309(n) of the Fannie Mae Charter Act or section 307(f) of the Freddie Mac Act.

AHAR information means data or information contained in the AHAR.

AHS means the American Housing Survey published by HUD and the Department of Commerce.

Balloon mortgage means a mortgage providing for payments at regular intervals, with a final payment (“balloon payment”) that is at least 5 percent more than the periodic payments. The periodic payments may cover some or all of the periodic principal or interest. Typically, the periodic payments are level monthly payments that would fully amortize the mortgage over a stated term and the balloon payment is a single payment due after a specified period (but before the mortgage would fully amortize) and pays off or satisfies the outstanding balance of the mortgage.

Book-entry GSE Security means a GSE Security issued or maintained in the Book-entry System. Book-entry GSE Security also means the separate interest and principal components of a Book-entry GSE Security if such security has been designated by the GSE as eligible for division into such components and the components are maintained separately on the books of one or more Federal Reserve Banks.

Book-entry System means the automated book-entry system operated by the Federal Reserve Banks acting as the fiscal agent for the GSEs, on which Book-entry GSE Securities are issued, recorded, transferred and maintained in book-entry form.

Central city means the underserved areas located in any political subdivision designated as a central city by the Office of Management and Budget of the Executive Office of the President.

Charter Act means the Fannie Mae Charter Act or the Freddie Mac Act.

Contract rent means the total rent that is, or is anticipated to be, specified in the rental contract as payable

by the tenant to the owner for rental of a dwelling unit, including fees or charges for management and maintenance services and those utility charges that are included in the rental contract. In determining contract rent, rent concessions shall not be considered, *i.e.*, contract rent is not decreased by any rent concessions. Contract rent is rent net of rental subsidies.

Conventional mortgage means a mortgage other than a mortgage as to which an Enterprise has the benefit of any guaranty, insurance or other obligation by the United States or any of its agencies or instrumentalities.

Day means a calendar day.

Definitive GSE Security means a GSE Security in engraved or printed form, or that is otherwise represented by a certificate.

Director means the Director of FHFA or his or her designee.

Dwelling unit means a room or unified combination of rooms intended for use, in whole or in part, as a dwelling by one or more persons, and includes a dwelling unit in a single-family property, multifamily property, or other residential or mixed-use property.

ECOA means the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*).

Eligible Book-entry Enterprise Security means a Book-entry Enterprise Security issued or maintained in the Book-entry System which by the terms of its Security Documentation is eligible to be converted from book-entry form into definitive form.

Enterprise means Fannie Mae or Freddie Mac (*Enterprises* means, collectively, Fannie Mae and Freddie Mac).

Entitlement Holder means a Person or a GSE to whose account an interest in a Book-entry GSE Security is credited on the records of a Securities Intermediary.

Family means one or more individuals who occupy the same dwelling unit.

Fannie Mae means the Federal National Mortgage Association and any affiliate thereof.

Fannie Mae Charter Act means the Federal National Mortgage Association Charter Act (12 U.S.C. 1715 *et seq.*).

Federal Reserve Bank Operating Circular means the publication issued by each Federal Reserve Bank that sets forth the terms and conditions under

which the Reserve Bank maintains book-entry Securities accounts (including Book-entry GSE Securities) and transfers book-entry Securities (including Book-entry GSE Securities).

FHFA means the Federal Housing Finance Agency.

FOIA means the Freedom of Information Act (5 U.S.C. 552).

Freddie Mac means the Federal Home Loan Mortgage Corporation and any affiliate thereof.

Freddie Mac Act means the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 *et seq.*).

Government-sponsored enterprise or *GSE* means Fannie Mae or Freddie Mac.

GSE Security means any security or obligation of Fannie Mae or Freddie Mac issued under its respective Charter Act in the form of a Definitive GSE Security or a Book-entry GSE Security.

HOEPA mortgage means a mortgage for which the annual percentage rate (as calculated in accordance with the relevant provisions of section 107 of the Home Ownership Equity Protection Act (HOEPA) (15 U.S.C. 1606)) exceeds the threshold described in section 103(aa)(1)(A) of HOEPA (15 U.S.C. 1602(aa)(1)(A)), or for which the total points and fees payable by the borrower exceed the threshold described in section 103(aa)(1)(B) of HOEPA (15 U.S.C. 1602(aa)(1)(B)), as those thresholds may be increased or decreased by the Federal Reserve Board or by Congress, unless the Enterprises are otherwise notified in writing by FHFA. Notwithstanding the exclusions in section 103(aa)(1) of HOEPA, for purposes of this part, the term “HOEPA mortgage” includes all types of mortgages as defined in this section, including residential mortgage transactions as that term is defined in section 103(w) of HOEPA (15 U.S.C. 1602(w)), but does not include reverse mortgages.

Home Purchase Mortgage means a residential mortgage for the purchase of an owner-occupied single-family property.

HUD means the United States Department of Housing and Urban Development.

Lender means any entity that makes, originates, sells, or services mortgages, and includes the secured creditors

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named in the debt obligation and document creating the mortgage.

Low-income area means a census tract or block numbering area in which the median income does not exceed 80 percent of the area median income.

Median income means, with respect to an area, the unadjusted median family income for the area as most recently determined by HUD. FHFA will provide the Enterprises annually with information specifying how the median family income estimates for metropolitan areas are to be applied for the purposes of determining median family income.

Metropolitan area means a metropolitan statistical area ("MSA"), or a portion of such an area for which median family income estimates are determined by HUD.

Minority means any individual who is included within any one or more of the following racial and ethnic categories:

(1) *American Indian or Alaskan Native*—a person having origins in any of the original peoples of North and South America (including Central America), and who maintains Tribal affiliation or community attachment;

(2) *Asian*—a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam;

(3) *Black or African American*—a person having origins in any of the black racial groups of Africa;

(4) *Hispanic or Latino*—a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race; and

(5) *Native Hawaiian or Other Pacific Islander*—a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Mortgage means a member of such classes of liens, including subordinate liens, as are commonly given or are legally effective to secure advances on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, or a manufactured home that is personal property under the laws of the State in which the manufactured home is located, together with the credit instru-

ments, if any, secured thereby, and includes interests in mortgages. "Mortgage" includes a mortgage, lien, including a subordinate lien, or other security interest on the stock or membership certificate issued to a tenant-stockholder or resident-member by a cooperative housing corporation, as defined in section 216 of the Internal Revenue Code of 1986, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation.

Mortgage data means data obtained by the Director from the Enterprises under subsection 309(m) of the Fannie Mae Charter Act and subsection 307(e) of the Freddie Mac Act.

Mortgage purchase means a transaction in which an Enterprise bought or otherwise acquired with cash or other thing of value, a mortgage for its portfolio or for securitization.

Mortgages contrary to good lending practices means a mortgage or a group or category of mortgages entered into by a lender and purchased by an Enterprise where it can be shown that a lender engaged in a practice of failing to:

(1) Report monthly on the borrower's repayment history to credit repositories on the status of each Enterprise loan that a lender is servicing;

(2) Offer mortgage applicants products for which they qualify, but rather steer applicants to high cost products that are designed for less credit worthy borrowers. Similarly, for consumers who seek financing through a lender's higher-priced subprime lending channel, lenders should not fail to offer or direct such consumers toward the lender's standard mortgage line if they are able to qualify for one of the standard products;

(3) Comply with fair lending requirements; or

(4) Engage in other good lending practices that are:

(i) Identified in writing by an Enterprise as good lending practices for inclusion in this definition; and

(ii) Determined by the Director to constitute good lending practices.

Mortgages with unacceptable terms or conditions or resulting from unacceptable

practices means a mortgage or a group or category of mortgages with one or more of the following terms or conditions:

(1) Excessive fees, where the total points and fees charged to a borrower exceed the greater of 5 percent of the loan amount or a maximum dollar amount of \$1000, or an alternative amount requested by an Enterprise and determined by the Director as appropriate for small mortgages.

(i) For purposes of this definition, points and fees include:

- (A) Origination fees;
- (B) Underwriting fees;
- (C) Broker fees;
- (D) Finder's fees; and

(E) Charges that the lender imposes as a condition of making the loan, whether they are paid to the lender or a third party.

(ii) For purposes of this definition, points and fees do not include:

- (A) Bona fide discount points;
- (B) Fees paid for actual services rendered in connection with the origination of the mortgage, such as attorneys' fees, notary's fees, and fees paid for property appraisals, credit reports, surveys, title examinations and extracts, flood and tax certifications, and home inspections;
- (C) The cost of mortgage insurance or credit-risk price adjustments;
- (D) The costs of title, hazard, and flood insurance policies;
- (E) State and local transfer taxes or fees;
- (F) Escrow deposits for the future payment of taxes and insurance premiums; and
- (G) Other miscellaneous fees and charges that, in total, do not exceed 0.25 percent of the loan amount.

(2) Prepayment penalties, except where:

(i) The mortgage provides some benefits to the borrower (*e.g.*, a rate or fee reduction for accepting the prepayment premium);

(ii) The borrower is offered the choice of another mortgage that does not contain payment of such a premium;

(iii) The terms of the mortgage provision containing the prepayment penalty are adequately disclosed to the borrower; and

(iv) The prepayment penalty is not charged when the mortgage debt is accelerated as the result of the borrower's default in making his or her mortgage payments.

(3) The sale or financing of prepaid single-premium credit life insurance products in connection with the origination of the mortgage;

(4) Evidence that the lender did not adequately consider the borrower's ability to make payments, *i.e.*, mortgages that are originated with underwriting techniques that focus on the borrower's equity in the home, and do not give full consideration of the borrower's income and other obligations. Ability to repay must be determined and must be based upon relating the borrower's income, assets, and liabilities to the mortgage payments; or

(5) Other terms or conditions that are:

(i) Identified in writing by an Enterprise as unacceptable terms or conditions or resulting from unacceptable practices for inclusion in this definition; and

(ii) Determined by the Director as an unacceptable term or condition of a mortgage for which goals credit should not be received.

Multifamily housing means a residence consisting of more than four dwelling units. The term includes cooperative buildings and condominium projects.

New England means Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Ongoing program means a program that is expected to continue for the foreseeable future.

Other underserved area means any underserved area that is in a metropolitan area, but not in a central city.

Owner-occupied unit means a dwelling unit in single-family housing in which a mortgagor of the unit resides.

Participant means a Person or GSE that maintains a Participant's Securities Account with a Federal Reserve Bank.

Participation means a fractional interest in the principal amount of a mortgage.

Person, as used in subpart H of 24 CFR part 81, means and includes an individual, corporation, company, governmental entity, association, firm,

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partnership, trust, estate, representative, and any other similar organization, but does not mean or include the United States, a GSE, or a Federal Reserve Bank.

Portfolio of loans means 10 or more loans.

Proprietary information means all mortgage data and all AHAR information that the Enterprises submit to the Director in the AHARs that contain trade secrets or privileged or confidential, commercial, or financial information that, if released, would be likely to cause substantial competitive harm.

Public data means all mortgage data and all AHAR information that the Enterprises submit to the Director in the AHARs that the Director determines are not proprietary and may appropriately be disclosed consistent with other applicable laws and regulations.

Real estate mortgage investment conduit (REMIC) means multi-class mortgage securities issued by a tax-exempt entity.

Refinancing means a transaction in which an existing mortgage is satisfied or replaced by a new mortgage undertaken by the same borrower. The term does not include:

(1) A renewal of a single payment obligation with no change in the original terms;

(2) A reduction in the annual percentage rate of the mortgage as computed under the Truth in Lending Act, with a corresponding change in the payment schedule;

(3) An agreement involving a court proceeding;

(4) A workout agreement, in which a change in the payment schedule or collateral requirements is agreed to as a result of the mortgagor's default or delinquency, unless the rate is increased or the new amount financed exceeds the unpaid balance plus earned finance charges and premiums for the continuation of insurance;

(5) The renewal of optional insurance purchased by the mortgagor and added to an existing mortgage;

(6) A renegotiated balloon mortgage on a multifamily property where the balloon payment was due within 1 year after the date of the closing of the renegotiated mortgage; and

(7) A conversion of a balloon mortgage note on a single family property to a fully amortizing mortgage note where the Enterprise already owns or has an interest in the balloon note at the time of the conversion.

Rent means, for a dwelling unit:

(1) When the contract rent includes all utilities, the contract rent; or

(2) When the contract rent does not include all utilities, the contract rent plus:

(i) The actual cost of utilities not included in the contract rent; or

(ii) A utility allowance.

Rental housing means dwelling units in multifamily housing and dwelling units that are not owner-occupied in single-family housing.

Rental unit means a dwelling unit that is not owner-occupied and is rented or available to rent.

Residence means a property where one or more families reside.

Residential mortgage means a mortgage on single-family or multifamily housing.

Revised Article 8 has the same meaning as in 31 CFR 357.2.

Rural area means any underserved area located outside of any metropolitan area.

Safety and Soundness Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Housing and Economic Recovery Act of 2008, codified generally at 12 U.S.C. 4501 *et seq.*

Seasoned mortgage means a mortgage on which the date of the mortgage note is more than 1 year before the Enterprise purchased the mortgage.

Second mortgage means any mortgage that has a lien position subordinate only to the lien of the first mortgage.

Secondary residence means a dwelling where the mortgagor maintains (or will maintain) a part-time place of abode and typically spends (or will spend) less than the majority of the calendar year. A person may have more than one secondary residence at a time.

Securities Documentation means the applicable statement of terms, trust indenture, securities agreement or other documents establishing the terms of a Book-entry GSE Security.

Security means any mortgage participation certificate, note, bond, debenture, evidence of indebtedness, collateral-trust certificate, transferable share, certificate of deposit for a security, or, in general, any interest or instrument commonly known as a “security”.

Single-family housing means a residence consisting of one to four dwelling units. Single-family housing includes condominium dwelling units and dwelling units in cooperative housing projects.

Transfer message means an instruction of a Participant to a Federal Reserve Bank to effect a transfer of a Book-entry Security (including a Book-entry GSE Security) maintained in the Book-entry System, as set forth in Federal Reserve Bank Operating Circulars.

Underserved area means:

(1) For purposes of the definitions of “Central city” and “Other underserved area”, a census tract, a Federal or State American Indian reservation or Tribal or individual trust land, or the balance of a census tract excluding the area within any Federal or State American Indian reservation or Tribal or individual trust land, having:

(i) A median income at or below 120 percent of the median income of the metropolitan area and a minority population of 30 percent or greater; or

(ii) A median income at or below 90 percent of median income of the metropolitan area.

(2) For purposes of the definition of “Rural area”, a whole census tract, a Federal or State American Indian reservation or Tribal or individual trust land, or the balance of a census tract excluding the area within any Federal or State American Indian reservation or Tribal or individual trust land, having:

(i) A median income at or below 120 percent of the greater of the State non-metropolitan median income or the nationwide non-metropolitan median income and a minority population of 30 percent or greater; or

(ii) A median income at or below 95 percent of the greater of the State non-metropolitan median income or nationwide non-metropolitan median income.

(3) Any Federal or State American Indian reservation or Tribal or individual trust land that includes land that is both within and outside of a metropolitan area and that is designated as an underserved area by FHFA. In such cases, FHFA will notify the Enterprises as to applicability of other definitions and counting conventions.

Utilities means charges for electricity, piped or bottled gas, water, sewage disposal, fuel (oil, coal, kerosene, wood, solar energy, or other), and garbage and trash collection. Utilities do not include charges for telephone service.

Utility allowance means either:

(1) The amount to be added to contract rent when utilities are not included in contract rent (also referred to as the “AHS-derived utility allowance”), as issued periodically by FHFA; or

(2) The utility allowance established under the HUD Section 8 Program (42 U.S.C. 1437f) for the area where the property is located.

Very low-income means, for purposes of the 2009 housing goals:

(1) In the case of owner-occupied units, income not in excess of 60 percent of area median income; and

(2) In the case of rental units, income not in excess of 60 percent of area median income, with adjustments for smaller and larger families, as determined by the Director.

Wholesale exchange means a transaction in which an Enterprise buys or otherwise acquires mortgages held in portfolio or securitized by the other Enterprise, or where both Enterprises swap such mortgages.

Working day means a day when FHFA is officially open for business.

(c) *Subpart H terms*. Unless the context requires otherwise, terms used in subpart H of 24 CFR part 81 that are not defined in this part, have the meanings as set forth in 31 CFR 357.2. Definitions and terms used in 31 CFR part 357 should read as though modified to effectuate their application to the GSEs.

Subpart B—Housing Goals**§ 1282.11 General.**

This subpart establishes three housing goals for 2009 as required by section 1331(c) of the Safety and Soundness Act, requirements for measuring performance under the goals, and procedures for monitoring and enforcing the goals.

§ 1282.12 Low- and Moderate-Income Housing Goal.

(a) *Purpose of goal.* This annual goal for the purchase by each Enterprise of mortgages on housing for low- and moderate-income families (“the Low- and Moderate-Income Housing Goal”) is intended to achieve increased purchases by the Enterprises of such mortgages.

(b) *Factors.* In establishing the Low- and Moderate-Income Housing Goals for 2009, the Director considered the feasibility of the goals given the current market conditions as required by section 1331(c) of the Safety and Soundness Act.

(c) *Goals.* For the year 2009, the goal for each Enterprise’s purchases of mortgages on housing for low- and moderate-income families shall be 43 percent of the total number of dwelling units financed by that Enterprise’s mortgage purchases in 2009. In addition, as a Low- and Moderate-Income Housing Home Purchase Subgoal, 40 percent of the total number of home purchase mortgages in metropolitan areas financed by that Enterprise’s mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the Low- and Moderate-Income Housing Goal for 2009.

§ 1282.13 Central Cities, Rural Areas, and Other Underserved Areas Housing Goal.

(a) *Purpose of the goal.* This annual goal for the purchase by each Enterprise of mortgages on housing located in central cities, rural areas, and other underserved areas is intended to achieve increased purchases by the Enterprises of mortgages financing housing in areas that are underserved in terms of mortgage credit.

(b) *Factors.* In establishing the Central Cities, Rural Areas, and Other Un-

derserved Areas Goals for 2009, the Director considered the feasibility of the goals given the current market conditions as required by section 1331(c) of the Safety and Soundness Act.

(c) *Goals.* For the year 2009, the goal for each Enterprise’s purchases of mortgages on housing located in central cities, rural areas, and other underserved areas shall be 32 percent of the total number of dwelling units financed by that Enterprise’s mortgage purchases in 2009. In addition, as a Central Cities, Rural Areas, and Other Underserved Areas Home Purchase Subgoal, 30 percent of the total number of home purchase mortgages in metropolitan areas financed by that Enterprise’s mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the Central Cities, Rural Areas, and Other Underserved Areas Housing Goal for 2009.

(d) *Measuring performance.* The Enterprises shall determine on a mortgage-by-mortgage basis, through geocoding or any similarly accurate and reliable method, whether a mortgage finances one or more dwelling units located in a central city, rural area, or other underserved area.

§ 1282.14 Special Affordable Housing Goal.

(a) *Purpose of the goal.* This goal is intended to achieve increased purchases by the Enterprises of mortgages on rental and owner-occupied housing meeting the then-existing unaddressed needs of, and affordable to, low-income families in low-income areas and very low-income families.

(b) *Factors.* In establishing the Special Affordable Housing Goals for 2009, the Director considered the feasibility of the goals given the current market conditions as required by section 1331(c) of the Safety and Soundness Act.

(c) *Goals.* For the year 2009, the goal for each Enterprise’s purchases of mortgages on rental and owner-occupied housing meeting the then-existing, unaddressed needs of and affordable to low-income families in low-income areas and very low-income families shall be 18 percent of the total number of dwelling units financed by

that Enterprise's mortgage purchases in 2009. The goal for the year 2009 shall include mortgage purchases financing dwelling units in multifamily housing totaling not less than 1.0 percent of the annual average dollar volume of combined (single-family and multifamily) mortgages purchased by the respective Enterprise in the years 1999 through 2008. That is, this multifamily subgoal for 2009 is \$6.56 billion for Fannie Mae and \$4.60 billion for Freddie Mac. In addition, as a Special Affordable Housing Home Purchase Subgoal, 14 percent of the total number of home purchase mortgages in metropolitan areas financed by that Enterprise's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the Special Affordable Housing Goal for 2009.

(d) *Counting of multifamily units*—(1) Dwelling units affordable to low-income families and financed by a particular purchase of a mortgage on multifamily housing shall count toward achievement of the Special Affordable Housing Goal where at least:

(i) 20 percent of the dwelling units in the particular multifamily property are affordable to especially low-income families; or

(ii) 40 percent of the dwelling units in the particular multifamily property are affordable to very low-income families.

(2) Where only some of the units financed by a purchase of a mortgage on multifamily housing count under the multifamily component of the goal, only a portion of the unpaid principal balance of the mortgage attributable to such units shall count toward the multifamily component. The portion of the mortgage counted under the multifamily requirement shall be equal to the ratio of the total units that count to the total number of units in the mortgaged property.

(e) *Full Credit Activities*—(1) For purposes of this paragraph (e), full credit means that each unit financed by a mortgage purchased by an Enterprise and meeting the requirements of this section shall count toward achievement of the Special Affordable Housing Goal for that Enterprise.

(2) The following mortgages meet the requirements of paragraph (e)(3) of this

section: mortgages insured under HUD's Home Equity Conversion Mortgage ("HECM") Insurance Program, 12 U.S.C. 1715z–20; mortgages guaranteed under the Rural Housing Service's Single Family Housing Guaranteed Loan Program, 42 U.S.C. 1472; mortgages on properties on Tribal lands insured under FHA's Section 248 program, 12 U.S.C. 1715z–13, HUD's Section 184 program, 12 U.S.C. 1515z–13a, or Title VI of the Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. 4191 through 4195.

(3) FHFA will give full credit toward achievement of the Special Affordable Housing Goal for the purchase or securitization of Federally insured or guaranteed mortgages if such mortgages cannot be readily securitized through the Government National Mortgage Association or any other Federal Agency, and participation of the Enterprise substantially enhances the affordability of the housing subject to such mortgages, provided the Enterprise submits documentation to FHFA that supports eligibility under this paragraph for FHFA's approval.

(4)(i) FHFA will give full credit toward achievement of the Special Affordable Housing Goal for the purchase or refinancing of existing seasoned portfolios of loans if the seller is engaged in a specific program to use the proceeds of such sales to originate additional loans that meet such goal, and such purchases or refinancings support additional lending for housing that otherwise qualifies under such goal to be considered for purposes of such goal. For purposes of determining whether a seller meets the requirement in this paragraph (e)(4), a seller must currently operate on its own or actively participate in an on-going, discernible, active, and verifiable program directly targeted at the origination of new mortgage loans that qualify under the Special Affordable Housing Goal.

(ii) A seller's activities must evidence a current intention or plan to reinvest the proceeds of the sale into mortgages qualifying under the Special Affordable Housing Goal, with a current commitment of resources on the part of the seller for this purpose.

(iii) A seller's actions must evidence willingness to buy qualifying loans

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when these loans become available in the market as part of active, on-going, sustainable efforts to ensure that additional loans that meet the goal are originated.

(iv) Actively participating in such a program includes purchasing qualifying loans from a correspondent originator, including a lender or qualified housing group, that operates an ongoing program resulting in the origination of loans that meet the requirements of the goal, has a history of delivering, and currently delivers qualifying loans to the seller.

(v) The Enterprise must verify and monitor that the seller meets the requirements in paragraphs (e)(4)(i) through (e)(4)(iv) of this section and develop any necessary mechanisms to ensure compliance with the requirements, except as provided in paragraphs (e)(4)(vi) and (vii) of this section.

(vi) Where a seller's primary business is originating mortgages on housing that qualifies under this Special Affordable Housing Goal, such seller is presumed to meet the requirements in paragraphs (e)(4)(i) through (e)(4)(iv) of this section. Sellers that are institutions that are:

(A) Regularly in the business of mortgage lending;

(B) Depository institutions insured under the Deposit Insurance Fund; and

(C) Subject to, and have received at least a satisfactory performance evaluation rating for:

(1) At least the two most recent consecutive examinations under the Community Reinvestment Act, if the lending institutions have total assets in excess of \$250 million; or

(2) The most recent examination under the Community Reinvestment Act if the lending institutions which have total assets no more than \$250 million are identified as sellers that are presumed to have a primary business of originating mortgages on housing that qualifies under this Special Affordable Housing Goal and, therefore, are presumed to meet the requirements in paragraphs (e)(4)(i) through (e)(4)(iv) of this section.

(vii) Classes of institutions or organizations that are presumed to have as their primary business originating

mortgages on housing that qualifies under this Special Affordable Housing Goal and, therefore, are presumed in paragraphs (e)(4)(i) through (e)(4)(iv) of this section to meet the requirements are as follows: State housing finance agencies; affordable housing loan consortia; and Federally insured credit unions that are:

(A) Members of the Federal Home Loan Bank System and meet the first-time homebuyer lending standard of the Community Support Program; or

(B) Community development financial institutions; public loan funds; or non-profit mortgage lenders. FHFA may determine that additional classes of institutions or organizations are primarily engaged in the business of financing affordable housing mortgages for purposes of this presumption, and if so, will notify the Enterprises in writing.

(viii) For purposes of paragraph (e)(4) of this section, if the seller did not originate the mortgage loans but the originator of the mortgage loans fulfills the requirements of either paragraphs (e)(4)(i) through (e)(4)(iv), paragraph (e)(4)(vi) or paragraph (e)(4)(vii) of this section, and the seller has held the loans for six months or less prior to selling the loans to the Enterprise, FHFA will consider that the seller has met the requirements of this paragraph (e)(4).

(f) *Partial credit activities.* Mortgages insured under HUD's Title I program, which includes property improvement and manufactured home loans, shall receive one-half credit toward the Special Affordable Housing Goal until such time as the Government National Mortgage Association fully implements a program to purchase and securitize Title I loans.

(g) *No credit activities.* Neither the purchase nor the securitization of mortgages associated with the refinancing of an Enterprise's existing mortgages or mortgage-backed securities portfolios shall receive credit toward the achievement of the Special Affordable Housing Goal. Refinancings that result from the wholesale exchange of mortgages between the two Enterprises shall not count toward the achievement of this goal. Refinancings

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of individual mortgages shall count toward achievement of this goal when the refinancing is an arms-length transaction that is borrower-driven and the mortgage otherwise counts toward achievement of this goal. For purposes of this paragraph (g), “mortgages or mortgage-backed securities portfolios” includes mortgages retained by Fannie Mae or Freddie Mac and mortgages utilized to back mortgage-backed securities.

§ 1282.15 General requirements.

(a) *Calculating the numerator and denominator.* Performance under each of the housing goals shall be measured using a fraction that is converted into a percentage.

(1) *The numerator.* The numerator of each fraction is the number of dwelling units financed by an Enterprise’s mortgage purchases in a particular year that count toward achievement of the housing goal.

(2) *The denominator.* The denominator of each fraction is, for all mortgages purchased, the number of dwelling units that could count toward achievement of the goal under appropriate circumstances. The denominator shall not include Enterprise transactions or activities that are not mortgages or mortgage purchases as defined by FHFA or transactions that are specifically excluded as ineligible under § 1282.16(b).

(3) *Missing data or information.* When an Enterprise lacks sufficient data or information to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of a particular housing goal, that mortgage purchase shall be included in the denominator for that housing goal, except under the circumstances described in paragraphs (d) and (e)(6) of this section.

(b) *Properties with multiple dwelling units.* For the purposes of counting toward the achievement of the goals, whenever the property securing a mortgage contains more than one dwelling unit, each such dwelling unit shall be counted as a separate dwelling unit financed by a mortgage purchase.

(c) *Credit toward multiple goals.* A mortgage purchase (or dwelling unit financed by such purchase) by an Enter-

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prise in a particular year shall count toward the achievement of each housing goal for which such purchase (or dwelling unit) qualifies in that year.

(d) *Counting owner-occupied units.* (1) For purposes of counting owner-occupied units toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal, mortgage purchases financing such units shall be evaluated based on the income of the mortgagors and the area median income at the time of origination of the mortgage. To determine whether mortgages may be counted under a particular family income level, *i.e.*, especially low-, very low-, low- or moderate-income, the income of the mortgagors is compared to the median income for the area at the time of the mortgage application, using the appropriate percentage factor provided under § 1282.17.

(2)(i) When the income of the mortgagor(s) is not available to determine whether an owner-occupied unit in a property securing a single-family mortgage originated after 1992 and purchased by an Enterprise counts toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal, an Enterprise’s performance with respect to such unit may be evaluated using estimated affordability information in accordance with one of the following methods:

(A) Excluding from the denominator and the numerator single-family owner-occupied units located in census tracts with median incomes less than, or equal to, area median income based on the most recent decennial census, up to a maximum of one percent of the total number of single-family owner-occupied dwelling units eligible to be counted toward the respective housing goal in the current year. Mortgage purchases with missing data in excess of the maximum will be included in the denominator and excluded from the numerator;

(B) For home purchase mortgages and for refinance mortgages separately, multiplying the number of owner-occupied units with missing borrower income information in properties securing mortgages purchased by the Enterprise in each census tract by the

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percentage of all single-family owner-occupied mortgage originations in the respective tracts that would count toward achievement of each goal, as determined by FHFA based on the most recent Home Mortgage Disclosure Act data available; or

(C) Such other data source and methodology as may be approved by FHFA.

(ii) In any calendar year, an Enterprise may use only one of the methods specified in paragraph (d)(2)(i) of this section to estimate affordability information for single-family owner-occupied units.

(iii) If an Enterprise chooses to use an estimation methodology under paragraph (d)(2)(i)(B) or (d)(2)(i)(C) of this section to determine affordability for owner-occupied units in properties securing single-family mortgage purchases eligible to be counted toward the respective housing goal, then that methodology may be used up to nationwide maximums for home purchase mortgages and for refinance mortgages that shall be calculated by multiplying, for each census tract, the percentage of all single-family owner-occupied mortgage originations with missing borrower incomes (as determined by FHFA based on the most recent Home Mortgage Disclosure Act data available for home purchase and refinance mortgages, respectively) by the number of single-family owner-occupied units in properties securing mortgages purchased by the Enterprise for each census tract, summed up over all census tracts. If this nationwide maximum is exceeded, then the estimated number of goal-qualifying units will be adjusted by the ratio of the applicable nationwide maximum number of units for which income information may be estimated to the total number of single-family owner-occupied units with missing income information in properties securing mortgages purchased by the Enterprise. Owner-occupied units in excess of the nationwide maximum, and any units for which estimation information is not available, shall remain in the denominator of the respective goal calculation.

(e) *Counting rental units*—(1) *Use of income, rent*—(i) *Generally*. For purposes of counting rental units toward achievement of the Low- and Mod-

erate-Income Housing Goal or the Special Affordable Housing Goal, mortgage purchases financing such units shall be evaluated based on the income of actual or prospective tenants where such data is available, *i.e.*, known to a lender.

(ii) *Availability of income information*.

(A) Each Enterprise shall require lenders to provide to the Enterprise tenant income information under paragraphs (e)(3) and (4) of this section, but only when such information is known to the lender.

(B) When such tenant income information is available for all occupied units, the Enterprise's performance shall be based on the income of the tenants in the occupied units. For unoccupied units that are vacant and available for rent and for unoccupied units that are under repair or renovation and not available for rent, the Enterprise shall use the income of prospective tenants, if paragraph (e)(4) of this section is applicable. If paragraph (e)(4) of this section is not applicable, the Enterprise shall use rent levels for comparable units in the property to determine affordability.

(2) *Model units and rental offices*. A model unit or rental office in a multifamily property may count toward achievement of the housing goals only if an Enterprise determines that:

(i) It is reasonably expected that the units will be occupied by a family within one year;

(ii) The number of such units is reasonable and minimal considering the size of the multifamily property; and

(iii) Such unit otherwise meets the requirements for the goal.

(3) *Income of actual tenants*. When the income of actual tenants is available, to determine whether a tenant is very low-, low-, or moderate-income, the income of the tenant shall be compared to the median income for the area, adjusted for family size as provided in § 1282.17.

(4) *Income of prospective tenants*. When income for tenants is available to a lender because a project is subject to a Federal housing program that establishes the maximum income for a tenant or a prospective tenant in rental units, the income of prospective tenants may be counted at the maximum

income level established under such housing program for that unit. In determining the income of prospective tenants, the income shall be projected based on the types of units and market area involved. Where the income of prospective tenants is projected, each Enterprise must determine that the income figures are reasonable considering the rents (if any) on the same units in the past and considering current rents on comparable units in the same market area.

(5) *Use of rent.* When the income of the prospective or actual tenants of a dwelling unit is not available, performance under these goals will be evaluated based on rent and whether the rent is affordable to the income group targeted by the housing goal. A rent is affordable if the rent does not exceed 30 percent of the maximum income level of very low-, low-, or moderate-income families as provided in §1282.19. In determining contract rent for a dwelling unit, the actual rent or average rent by unit type shall be used.

(6) *Affordability data unavailable—(i) Multifamily—(A)* When an Enterprise lacks sufficient information to determine whether a rental unit in a property securing a multifamily mortgage purchased by an Enterprise counts toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal because neither the income of prospective or actual tenants, nor the actual or average rental data, are available, an Enterprise's performance with respect to such unit may be evaluated using estimated affordability information in accordance with one of the following methods:

(1) Multiplying the number of rental units with missing affordability information in properties securing multifamily mortgages purchased by the Enterprise in each census tract by the percentage of all rental dwelling units in the respective tracts that would count toward achievement of each goal, as determined by FHFA based on the most recent decennial census. For units with missing affordability information in tracts for which such methodology is not possible, such units will be excluded from the denominator as well as the numerator in calculating

performance under the respective housing goal(s); or

(2) Such other data source and methodology as may be approved by FHFA.

(B) In any calendar year, an Enterprise may use only one of the methods specified in paragraph (e)(6)(i)(A) of this section to estimate affordability information for multifamily rental units.

(C) If an Enterprise chooses to use an estimation methodology under paragraph (e)(6)(i)(A) of this section to determine affordability for rental units in properties securing multifamily mortgage purchases eligible to be counted toward the respective housing goal, then that methodology may be used up to a nationwide maximum of ten percent of the total number of rental units in properties securing multifamily mortgages purchased by the Enterprise in the current year. If this maximum is exceeded, the estimated number of goal-qualifying units will be adjusted by the ratio of the nationwide maximum number of units for which affordability information may be estimated to the total number of multifamily rental units with missing affordability information in properties securing mortgages purchased by the Enterprise. Multifamily rental units in excess of the maximum set forth in this paragraph (e)(6)(i)(C), and any units for which estimation information is not available, shall be removed from the denominator of the respective goal calculation.

(ii) *Rental units in 1–4 unit single-family properties—(A)* When an Enterprise lacks sufficient information to determine whether a rental unit in a property securing a single-family mortgage purchased by an Enterprise counts toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal because neither the income of prospective or actual tenants, nor the actual or average rental data, are available, an Enterprise's performance with respect to such unit may be evaluated using estimated affordability information in accordance with one of the following methods:

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(1) Excluding rental units in 1- to 4-unit properties with missing affordability information from the denominator as well as the numerator in calculating performance under those goals;

(2) Multiplying the number of rental units with missing affordability information in properties securing single family mortgages purchased by the Enterprise in each census tract by the percentage of all rental dwelling units in the respective tracts that would count toward achievement of each goal, as determined by FHFA based on the most recent decennial census. For units with missing affordability information in tracts for which such methodology is not possible, such units will be excluded from the denominator as well as the numerator in calculating performance under the respective housing goal(s); or

(3) Such other data source and methodology as may be approved by FHFA.

(B) In any calendar year, an Enterprise may use only one of the methods specified in paragraph (e)(6)(ii)(A) of this section to estimate affordability information for single-family rental units.

(C) If an Enterprise chooses to use an estimation methodology under paragraph (e)(6)(ii)(A)(2) or (e)(6)(ii)(A)(3) of this section to determine affordability for rental units in properties securing single-family mortgage purchases eligible to be counted toward the respective housing goal, then that methodology may be used up to nationwide maximums of five percent of the total number of rental units in properties securing non-seasoned single-family mortgage purchases by the Enterprise in the current year and 20 percent of the total number of rental units in properties securing seasoned single-family mortgage purchases by the Enterprise in the current year. If either or both of these maximums are exceeded, the estimated number of goal-qualifying units will be adjusted by the ratio of the applicable nationwide maximum number of units for which affordability information may be estimated to the total number of single-family rental units with missing affordability information in properties securing seasoned or unseasoned mortgages purchased by the Enter-

prise, as applicable. Single-family rental units in excess of the maximums set forth in this paragraph (e)(6)(ii)(C), and any units for which estimation information is not available, shall be removed from the denominator of the respective goal calculation.

(7) *Timeliness of information.* In determining performance under the housing goals, each Enterprise shall use tenant and rental information as of the time of mortgage:

(i) Acquisition for mortgages on multifamily housing; and

(ii) Origination for mortgages on single-family housing.

(f) *Application of median income*—(1) For purposes of determining an area's median income under §§1282.17 through 1282.19 and for the definition of "low-income area," the area is:

(i) The metropolitan area, if the property which is the subject of the mortgage is in a metropolitan area; and

(ii) In all other areas, the county in which the property is located, except that where the State nonmetropolitan median income is higher than the county's median income, the area is the State nonmetropolitan area.

(2) When an Enterprise cannot precisely determine whether a mortgage is on dwelling unit(s) located in one area, the Enterprise shall determine the median income for the split area in the manner prescribed by the Federal Financial Institutions Examination Council for reporting under the Home Mortgage Disclosure Act, if the Enterprise can determine that the mortgage is on dwelling unit(s) located in:

(i) A census tract;

(ii) A census place code;

(iii) A block-group enumeration district;

(iv) A nine-digit zip code; or

(v) Another appropriate geographic segment that is partially located in more than one area ("split area").

(g) *Sampling not permitted.* Performance under the housing goals for each year shall be based on a complete tabulation of mortgage purchases for that year; a sampling of such purchases is not acceptable.

(h) *Newly available data.* When an Enterprise uses data to determine whether a mortgage purchase counts toward

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achievement of any goal and new data is released after the start of a calendar quarter, the Enterprise need not use the new data until the start of the following quarter.

(i) *Counting mortgages toward the Home Purchase Subgoals*—(1) *General*. The requirements of this section, except for paragraphs (b) and (e) of this section, shall apply to counting mortgages toward the Home Purchase Subgoals at §§1282.12 through 1282.14. However, performance under the subgoals shall be counted using a fraction that is converted into a percentage for each subgoal and the numerator of the fraction for each subgoal shall be the number of home purchase mortgages in metropolitan areas financed by each Enterprise's mortgage purchases in a particular year that count towards achievement of the applicable housing goal. The denominator of each fraction shall be the total number of home purchase mortgages in metropolitan areas financed by each Enterprise's mortgage purchases in a particular year. For purposes of each subgoal, the procedure for addressing missing data or information, as set forth in paragraph (d) of this section, shall be implemented using numbers of home purchase mortgages in metropolitan areas and not single-family owner-occupied dwelling units.

(2) *Special counting rule for mortgages with more than one owner-occupied unit*. For purposes of counting mortgages toward the Home Purchase Subgoals, where a single home purchase mortgage finances the purchase of two or more owner-occupied units in a metropolitan area, the mortgage shall count once toward each subgoal that applies to the Enterprise's mortgage purchase.

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(a) *General*. FHFA shall determine whether an Enterprise shall receive full, partial, or no credit for a transaction toward achievement of any of the housing goals. In this determination, FHFA will consider whether a transaction or activity of the Enterprise is substantially equivalent to a mortgage purchase and either creates a new market or adds liquidity to an existing market, provided however that

such mortgage purchase actually fulfills the Enterprise's purposes and is in accordance with its Charter Act.

(b) *Not counted*. The following transactions or activities shall not count toward achievement of any of the housing goals and shall not be included in the denominator in calculating either Enterprise's performance under the housing goals:

(1) Equity investments in housing development projects;

(2) Purchases of State and local government housing bonds except as provided in §1282.16(c)(8);

(3) Purchases of non-conventional mortgages except:

(i) Where such mortgages are acquired under a risk-sharing arrangement with a Federal agency;

(ii) Mortgages insured under HUD's Home Equity Conversion Mortgage ("HECM") insurance program, 12 U.S.C. 1715z–20; mortgages guaranteed under the Rural Housing Service's Single Family Housing Guaranteed Loan Program, 42 U.S.C. 1472; mortgages on properties on lands insured under FHA's Section 248 program, 12 U.S.C. 1715z–13, HUD's Section 184 program, 12 U.S.C. 1515z–13a, or Title VI of the Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. 4191 through 4195; and mortgages with expiring assistance contracts as defined at 42 U.S.C. 1737f;

(iii) Mortgages under other mortgage programs involving Federal guarantees, insurance or other Federal obligation where FHFA determines in writing that the financing needs addressed by the particular mortgage program are not well served and that the mortgage purchases under such program should count under the housing goals, provided the Enterprise submits documentation to FHFA that supports eligibility and that FHFA makes such a determination; or

(iv) As provided in §1282.14(e)(3);

(4) Commitments to buy mortgages at a later date or time;

(5) Options to acquire mortgages;

(6) Rights of first refusal to acquire mortgages;

(7) Any interests in mortgages that the Director determines, in writing, shall not be treated as interests in mortgages;

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(8) Mortgage purchases to the extent they finance any dwelling units that are secondary residences;

(9) Single family mortgage refinancings that result from conversion of balloon notes to fully amortizing notes, if the Enterprise already owns or has an interest in the balloon note at the time conversion occurs;

(10) Purchases of mortgages on one- to four-unit properties with maximum original principal obligations that exceed:

(i) The nationwide conforming loan limits for properties of a particular size; or

(ii) 150 percent of the nationwide conforming loan limits for properties of a particular size located in Alaska, Guam, Hawaii and the Virgin Islands; and

(11) Any combination of factors in paragraphs (b)(1) through (10) of this section.

(c) *Other special rules.* Subject to FHFA's primary determination of whether an Enterprise shall receive full, partial, or no credit for a transaction toward achievement of any of the housing goals as provided in paragraph (a) of this section, the following supplemental rules apply:

(1) *Credit enhancements.* (i) Dwelling units financed under a credit enhancement entered into by an Enterprise shall be treated as mortgage purchases and count toward achievement of the housing goals when:

(A) The Enterprise provides a specific contractual obligation to ensure timely payment of amounts due under a mortgage or mortgages financed by the issuance of housing bonds (such bonds may be issued by any entity, including a State or local housing finance agency);

(B) The Enterprise assumes a credit risk in the transaction substantially equivalent to the risk that would have been assumed by the Enterprise if it had securitized the mortgages financed by such bonds; and

(C) Such dwelling units otherwise qualify under this part.

(ii) When an Enterprise provides a specific contractual obligation to ensure timely payment of amounts due under any mortgage originally insured by a public purpose mortgage insur-

ance entity or fund, the Enterprise may, on a case-by-case basis, seek approval from the Director for such activities to count toward achievement of the housing goals.

(2) *Real estate mortgage investment conduits ("REMICs").* (i) An Enterprise's purchase or guarantee of all or a portion of a REMIC shall be treated as a mortgage purchase and receive credit toward the achievement of the housing goals provided:

(A) The underlying mortgages or mortgage-backed securities for the REMIC were not:

(1) Guaranteed by the Government National Mortgage Association; or

(2) Previously counted toward any housing goal by the Enterprise; and

(B) The Enterprise has the information necessary to support counting the dwelling units financed by the REMIC, or that part of the REMIC purchased or guaranteed by the Enterprise, toward the achievement of a particular housing goal.

(ii) For REMICs that meet the requirements in paragraph (c)(2)(i) of this section and for which the Enterprise purchased or guaranteed:

(A) The whole REMIC, all of the units financed by the REMIC shall be treated as a mortgage purchase and count toward achievement of the housing goals; or

(B) A portion of the REMIC, the Enterprise shall receive partial credit toward achievement of the housing goals. This credit shall be equal to the percentage of the REMIC purchased or guaranteed by the Enterprise (the dollar amount of the purchase or guarantee divided by the total dollar amount of the REMIC) multiplied by the number of dwelling units that would have counted toward the goal(s) if the Enterprise had purchased or guaranteed the whole REMIC. In calculating performance under the housing goals, the denominator shall include the number of dwelling units included in the whole REMIC multiplied by the percentage of the REMIC purchased or guaranteed by the Enterprise.

(3) *Risk-sharing.* Mortgage purchases under risk-sharing arrangements between the Enterprises and any Federal agency where the units would otherwise count toward achievement of the

housing goal under which the Enterprise is responsible for a substantial amount (50 percent or more) of the risk shall be treated as mortgage purchases and count toward achievement of the housing goal or goals.

(4) *Participations.* Participations purchased by an Enterprise shall be treated as mortgage purchases and count toward the achievement of the housing goals, if the Enterprise's participation in the mortgage is 50 percent or more.

(5) *Cooperative housing and condominium projects.* (i) The purchase of a mortgage on a cooperative housing unit ("a share loan") or a condominium unit is a mortgage purchase. Such a purchase is counted toward achievement of a housing goal in the same manner as a mortgage purchase of single-family owner-occupied units, *i.e.*, affordability is based on the income of the owner(s).

(ii) The purchase of a mortgage on a cooperative building ("a blanket loan") or a condominium project is a mortgage purchase and shall count toward achievement of the housing goals. Where an Enterprise purchases both "a blanket loan" and mortgages for units in the same building ("share loans"), both the blanket loan and the share loan(s) are mortgage purchases and shall count toward achievement of the housing goals. Where an Enterprise purchases both a condominium project mortgage and mortgages on condominium dwelling units in the same project, both the condominium project mortgages and the mortgages on condominium dwelling units are mortgage purchases and shall count toward achievement of the housing goals.

(6) *Seasoned mortgages.* An Enterprise's purchase of a seasoned mortgage shall be treated as a mortgage purchase for purposes of these goals and shall be included in the numerator, as appropriate, and the denominator in calculating the Enterprise's performance under the housing goals, except where:

(i) The Enterprise has already counted the mortgage under a housing goal applicable to 1993 or any subsequent year; or

(ii) FHFA determines, based upon a written request by an Enterprise, that a seasoned mortgage or class of such

mortgages should be excluded from the numerator and the denominator in order to further the purposes of the Special Affordable Housing Goal.

(7) *Purchase of refinanced mortgages.* Except as otherwise provided in this part, the purchase of a refinanced mortgage by an Enterprise is a mortgage purchase and shall count toward achievement of the housing goals to the extent the mortgage qualifies.

(8) *Mortgage revenue bonds.* (i) The purchase of a State or local mortgage revenue bond shall be treated as a mortgage purchase and units financed under such mortgage revenue bond shall count toward achievement of the goals where:

(A) The mortgage revenue bond is to be repaid only from the principal and interest of the underlying mortgages originated with funds made available by the mortgage revenue bond; and

(B) The mortgage revenue bond is not a general obligation of a State or local government or agency or is not credit enhanced by any government or agency, third party guarantor or surety.

(ii) Dwelling units financed by a mortgage revenue bond meeting the requirements of paragraph (c)(8)(i) of this section shall count toward achievement of a housing goal to the extent such dwelling units otherwise qualify under this part.

(9) *Expiring assistance contracts.* Actions that assist in maintaining the affordability of assisted units in eligible multifamily housing projects with expiring contracts, as defined under the Multifamily Assisted Housing Reform and Affordability Act of 1997, shall receive credit under the housing goals as provided in paragraph (b)(3)(ii) and in accordance with paragraphs (b) and (c)(1) through (c)(10) of this section.

(i) For restructured (modified) multifamily mortgage loans with an expiring assistance contract where an Enterprise holds the loan in portfolio and facilitates modification of loan terms that results in lower debt service to the project's owner, the Enterprise shall receive full credit under any of the housing goals for which the units covered by the mortgage otherwise qualify.

(ii) Where an Enterprise undertakes more than one action to assist a single

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project or where an Enterprise engages in an activity that it believes assists in maintaining the affordability of assisted units in eligible multifamily housing projects but which is not otherwise covered in paragraph (c)(9)(i) of this section, the Enterprise must submit the transaction to FHFA for a determination on appropriate goals counting treatment.

(10) *Loan modifications.* An Enterprise's modification of a loan in accordance with the Making Homes Affordable Program announced on March 4, 2009, that is held in the Enterprise's portfolio or that is in a pool backing a security guaranteed by the Enterprise, shall be treated as a mortgage purchase for purposes of the housing goals.

(11) [Reserved]

(12) *HOEPA mortgages and mortgages with unacceptable terms and conditions.* HOEPA mortgages and mortgages with unacceptable terms or conditions as defined in § 1282.2 shall not receive credit toward any of the three housing goals.

(13) *Mortgages contrary to good lending practices.* The Director shall monitor the practices and processes of the Enterprises to ensure that they are not purchasing loans that are contrary to good lending practices as defined in § 1282.2. Based on the results of such monitoring, the Director may determine in accordance with paragraph (d) of this section that mortgages or categories of mortgages where a lender has not engaged in good lending practices shall not receive credit toward the three housing goals.

(14) *Seller dissolution option.* (i) Mortgages acquired through transactions involving seller dissolution options shall be treated as mortgage purchases and receive credit toward the achievement of the housing goals, only when:

(A) The terms of the transaction provide for a lockout period that prohibits the exercise of the dissolution option for at least one year from the date on which the transaction was entered into by the Enterprise and the seller of the mortgages; and

(B) The transaction is not dissolved during the one-year minimum lockout period.

(ii) The Director may grant an exception to the one-year minimum lockout period described in paragraphs

(c)(14)(i)(A) and (B) of this section, in response to a written request from an Enterprise, if the Director determines that the transaction furthers the purposes of the Safety and Soundness Act and the Enterprise's Charter Act;

(iii) For purposes of this paragraph (c)(14), "seller dissolution option" means an option for a seller of mortgages to the Enterprises to dissolve or otherwise cancel a mortgage purchase agreement or loan sale.

(d) *FHFA review of transactions.* FHFA will determine whether a class of transactions counts as a mortgage purchase under the housing goals. If an Enterprise seeks to have a class of transactions counted under the housing goals that does not otherwise count under the rules in this part, the Enterprise may provide FHFA detailed information regarding the transactions for evaluation and determination by FHFA in accordance with this section. In making its determination, FHFA may also request and evaluate additional information from an Enterprise with regard to how the Enterprise believes the transactions should be counted. FHFA will notify the Enterprise of its determination regarding the extent to which the class of transactions may count under the goals.

§ 1282.17 Affordability—Income level definitions—family size and income known (owner-occupied units, actual tenants, and prospective tenants).

In determining whether a dwelling unit is affordable to very low-, low-, or moderate-income families, where the unit is owner-occupied or, for rental housing, family size and income information for the dwelling unit is known to the Enterprise, the affordability of the unit shall be determined as follows:

(a) *Moderate-income* means:

(1) In the case of owner-occupied units, income not in excess of 100 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

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Number of persons in family	Percentage of area median income
1	70
2	80
3	90
4	100
5 or more	*

* 100% plus (8% multiplied by the number of persons in excess of 4).

(b) *Low-income* means:

(1) In the case of owner-occupied units, income not in excess of 80 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	56
2	64
3	72
4	80
5 or more	*

* 80% plus (6.4% multiplied by the number of persons in excess of 4).

(c) *Very-low-income* means:

(1) In the case of owner-occupied units, income not in excess of 60 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	42
2	48
3	54
4	60
5 or more	*

* 60% plus (4.8% multiplied by the number of persons in excess of 4).

(d) *Especially-low-income* means, in the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

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Number of persons in family	Percentage of area median income
1	35
2	40
3	45
4	50
5 or more	*

* 50% plus (4.0% multiplied by the number of persons in excess of 4).

§ 1282.18 Affordability—Income level definitions—family size not known (actual or prospective tenants).

In determining whether a rental unit is affordable to very low-, low-, or moderate-income families where family size is not known to the Enterprise, income will be adjusted using unit size, and affordability determined as follows:

(a) *For moderate-income*, the income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	70
1 bedroom	75
2 bedrooms	90
3 bedrooms or more	*

* 104% plus (12% multiplied by the number of bedrooms in excess of 3).

(b) *For low-income*, income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	56
1 bedroom	60
2 bedrooms	72
3 bedrooms or more	*

* 83.2% plus (9.6% multiplied by the number of bedrooms in excess of 3).

(c) *For very low-income*, income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

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Unit size	Percentage of area median income
Efficiency	42
1 bedroom	45
2 bedrooms	54
3 bedrooms or more	*

* 62.4% plus (7.2% multiplied by the number of bedrooms in excess of 3).

(d) *For especially low-income*, income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	35
1 bedroom	37.5
2 bedrooms	45
3 bedrooms or more	*

* 52% plus (6.0% multiplied by the number of bedrooms in excess of 3).

§ 1282.19 Affordability—Rent level definitions—tenant income is not known.

For purposes of determining whether a rental unit is affordable to very low-, low-, or moderate-income families where the income of the family in the dwelling unit is not known to the Enterprise, the affordability of the unit is determined based on unit size as follows:

(a) *For moderate-income*, maximum affordable rents to count as housing for moderate-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	21
1 bedroom	22.5
2 bedrooms	27
3 bedrooms or more	*

* 31.2% plus (3.6% multiplied by the number of bedrooms in excess of 3).

(b) *For low-income*, maximum affordable rents to count as housing for low-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	16.8
1 bedroom	18
2 bedrooms	21.6
3 bedrooms or more	*

* 24.96% plus (2.88% multiplied by the number of bedrooms in excess of 3).

(c) *For very low-income*, maximum affordable rents to count as housing for very low-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	12.6
1 bedroom	13.5
2 bedrooms	16.2
3 bedrooms or more	*

* 18.72% plus (2.16% multiplied by the number of bedrooms in excess of 3).

(d) *For especially low-income*, maximum affordable rents to count as housing for especially low-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	10.5
1 bedroom	11.25
2 bedrooms	13.5
3 bedrooms or more	*

* 15.6% plus (1.8% multiplied by the number of bedrooms in excess of 3).

(e) *Missing Information.* Each Enterprise shall make every effort to obtain the information necessary to make the calculations in this section. If an Enterprise makes such efforts but cannot obtain data on the number of bedrooms in particular units, in making the calculations on such units, the units shall be assumed to be efficiencies except as provided in § 1282.15(e)(6)(i).

§ 1282.20 Actions to be taken to meet the goals.

To meet the goals under this rule, each Enterprise shall operate in accordance with 12 U.S.C. 4565(b).

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§ 1282.21 Notice and determination of failure to meet goals.

If the Director determines that an Enterprise has failed or there is a substantial probability that an Enterprise will fail to meet any housing goal, the Director shall follow the procedures at 12 U.S.C. 4566(b).

§ 1282.22 Housing plans.

(a) If the Director determines, under § 1282.21, that an Enterprise has failed or there is a substantial probability that an Enterprise will fail to meet any housing goal and that the achievement of the housing goal was or is feasible, the Director may require the Enterprise to submit a housing plan for approval by the Director.

(b) *Nature of plan.* If the Director requires a housing plan, the housing plan shall:

(1) Be feasible;

(2) Be sufficiently specific to enable the Director to monitor compliance periodically;

(3) Describe the specific actions that the Enterprise will take:

(i) To achieve the goal for the next calendar year; and

(ii) If the Director determines that there is a substantial probability that the Enterprise will fail to meet a housing goal in the current year, to make such improvements and changes in its operations as are reasonable in the remainder of the year; and

(4) Address any additional matters relevant to the plan as required, in writing, by the Director.

(c) *Deadline for submission.* The Enterprise shall submit the housing plan to the Director within 30 days after issuance of a notice under § 1282.21 requiring the Enterprise to submit a housing plan. The Director may extend the deadline for submission of a plan, in writing and for a time certain, to the extent the Director determines an extension is necessary.

(d) *Review of housing plans.* The Director shall review and approve or disapprove housing plans in accordance with 12 U.S.C. 4566(c)(4) and (5).

(e) *Resubmission.* If the Director disapproves an initial housing plan submitted by an Enterprise, the Enterprise shall submit an amended plan acceptable to the Director not later than

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15 days after the Director's disapproval of the initial plan; the Director may extend the deadline if the Director determines an extension is in the public interest. If the amended plan is not acceptable to the Director, the Director may afford the Enterprise 15 days to submit a new plan.

PART 1291—FEDERAL HOME LOAN BANKS' AFFORDABLE HOUSING PROGRAM

Sec.

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AUTHORITY: 12 U.S.C. 1430(j).

SOURCE: 71 FR 59286, Oct. 6, 2006, unless otherwise noted. Redesignated at 73 FR 61664, Oct. 17, 2008.

§ 1291.1 Definitions.

As used in this part:

Affordable means that:

(1) The rent charged to a household for a unit that is to be reserved for occupancy by a household with an income at or below 80 percent of the median income for the area, does not exceed 30 percent of the income of a household of the maximum income and size expected, under the commitment made in the AHP application, to occupy the unit (assuming occupancy of 1.5 persons per bedroom or 1.0 persons per unit without a separate bedroom); or

(2) The rent charged to a household, for rental units subsidized with Section 8 assistance under 42 U.S.C. 1437f or subsidized under another assistance program where the rents are charged in the same way as under the Section 8 program, if the rent complied with this § 1291.1 of this part at the time of the household's initial occupancy and the household continues to be assisted

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through the Section 8 or another assistance program, respectively.

AHP project means a single-family or multifamily housing project for owner-occupied or rental housing that has been awarded or has received AHP subsidy under the competitive application program.

Competitive application program means a program established by a Bank under which the Bank awards and disburses AHP subsidy through a competitive application scoring process pursuant to the requirements of § 1291.5 of this part.

Cost of funds means, for purposes of a subsidized advance, the estimated cost of issuing Bank System consolidated obligations with maturities comparable to that of the subsidized advance.

Direct subsidy means an AHP subsidy in the form of a direct cash payment.

Director means the Director of the Federal Housing Finance Agency, or his or her designate.

Eligible household means a household that meets the income limits and other requirements specified by a Bank for its competitive application program and homeownership set-aside programs, provided that:

(1) In the case of owner-occupied housing, the household's income may not exceed 80 percent of the median income for the area; and

(2) In the case of rental housing, the household's income in at least 20 percent of the units may not exceed 50 percent of the median income for the area.

Eligible project means a project eligible to receive AHP subsidy pursuant to the requirements of this part.

Eligible targeted refinancing program means a program offered by the U.S. Department of Housing and Urban Development (HUD), the U.S. Department of Agriculture (USDA), the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), a State or local government, or a State or local housing finance agency for the limited purpose of refinancing (*i.e.*, paying off) first mortgages on primary residences for households that cannot afford or are at risk of not being able to afford their monthly payments, as

defined by the program, in order to prevent foreclosure.

Family member means any individual related to a person by blood, marriage, or adoption.

FHFA means the Federal Housing Finance Agency.

Funding period means a time period, as determined by a Bank, during which the Bank accepts AHP applications for subsidy.

Homeownership set-aside program means a program established by a Bank under which the Bank disburses AHP direct subsidy pursuant to the requirements of § 1291.6 of this part.

Loan pool means a group of mortgage or other loans meeting the requirements of this part that are purchased, pooled, and held in trust.

Low- or moderate-income household means a household that has an income of 80 percent or less of the median income for the area, with the income limit adjusted for household size in accordance with the methodology of the applicable median income standard, unless such median income standard has no household size adjustment methodology.

Low- or moderate-income neighborhood means any neighborhood in which 51 percent or more of the households have incomes at or below 80 percent of the median income for the area.

Median income for the area means one or more of the following median income standards as determined by a Bank, after consultation with its Advisory Council, in its AHP Implementation Plan:

(1) The median income for the area, as published annually by HUD;

(2) The median income for the area obtained from the Federal Financial Institutions Examination Council;

(3) The applicable median family income, as determined under 26 U.S.C. 143(f) (Mortgage Revenue Bonds) and published by a state agency or instrumentality;

(4) The median income for the area, as published by the United States Department of Agriculture; or

(5) The median income for an applicable definable geographic area, as published by a federal, state, or local government entity, and approved by the

FHFA, at the request of a Bank, for use under the AHP.

Multifamily building means a structure with 5 or more dwelling units.

Net earnings of a Bank means the net earnings of a Bank for a calendar year after deducting the Bank's annual contribution to the Resolution Funding Corporation required under section 21B of the Act (12 U.S.C. 1441b), and before declaring or paying any dividend under section 16 of the Act (12 U.S.C. 1436). For purposes of this part, "dividend" includes any dividends on capital stock subject to a redemption request even if under GAAP those dividends are treated as an "interest expense."

Owner-occupied project means, for purposes of the competitive application program, one or more owner-occupied units in a single-family or multifamily building, including condominiums, co-operative housing, and manufactured housing.

Owner-occupied unit means a dwelling unit occupied by the owner of the unit. Housing with 2 to 4 dwelling units consisting of one owner-occupied unit and one or more rental units is considered a single owner-occupied unit.

Program means the Affordable Housing Program established pursuant to this part.

Rental project means, for purposes of the competitive application program, one or more dwelling units for occupancy by households that are not owner-occupants, including overnight and emergency shelters, transitional housing for homeless households, mutual housing, single-room occupancy housing, and manufactured housing.

Retention period means:

(1) Five years from closing for an AHP-assisted owner-occupied unit, or in the case of rehabilitation of a unit currently occupied by the owner where there is no closing, 5 years from the date established by the Bank in its AHP Implementation Plan; and

(2) Fifteen years from the date of project completion for a rental project.

Revolving loan fund means a capital fund established to make mortgage or other loans whereby loan principal is repaid into the fund and re-lent to other borrowers.

Single-family building means a structure with 1 to 4 dwelling units.

Sponsor means a not-for-profit or for-profit organization or public entity that:

(1) Has an ownership interest (including any partnership interest), as defined by the Bank in its AHP Implementation Plan, in a rental project;

(2) Is integrally involved, as defined by the Bank in its AHP Implementation Plan, in an owner-occupied project, such as by exercising control over the planning, development, or management of the project, or by qualifying borrowers and providing or arranging financing for the owners of the units;

(3) Operates a loan pool; or

(4) Is a revolving loan fund.

Subsidized advance means an advance to a member at an interest rate reduced below the Bank's cost of funds by use of a subsidy.

Subsidy means:

(1) A direct subsidy, provided that if a direct subsidy is used to write down the interest rate on a loan extended by a member, sponsor, or other party to a project, the subsidy must equal the net present value of the interest foregone from making the loan below the lender's market interest rate; or

(2) The net present value of the interest revenue foregone from making a subsidized advance at a rate below the Bank's cost of funds.

Very low-income household means a household that has an income at or below 50 percent of the median income for the area, with the income limit adjusted for household size in accordance with the methodology of the applicable median income standard, unless such median income standard has no household size adjustment methodology.

Visitable means, in either owner-occupied or rental housing, at least one entrance is at-grade (no steps) and approached by an accessible route such as a sidewalk, and the entrance door and all interior passage doors are at least 2 feet, 10 inches wide, offering 32 inches of clear passage space.

[71 FR 59286, Oct. 6, 2006, as amended at 73 FR 61664, Oct. 17, 2008; 74 FR 38521, Aug. 4, 2009]

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§ 1291.2 Required annual AHP contributions; allocation of contributions.

(a) *Annual AHP contributions.* Each Bank shall contribute annually to its Program the greater of:

(1) 10 percent of the Bank's net earnings for the previous year; or

(2) That Bank's pro rata share of an aggregate of \$100 million to be contributed in total by the Banks, such proration being made on the basis of the net earnings of the Banks for the previous year, except that the required annual AHP contribution for a Bank shall not exceed its net earnings in the previous year.

(b) *Allocation of contributions.* Each Bank, after consultation with its Advisory Council and pursuant to written policies adopted by the Bank's board of directors, shall allocate its annual required AHP contribution as follows:

(1) *Competitive application program.* Each Bank shall allocate annually that portion of its annual required AHP contribution that is not set aside to fund homeownership set-aside programs under paragraph (b)(2) of this section, to provide funds to members through a competitive application program, pursuant to the requirements of this part.

(2) *Homeownership set-aside programs—*
(i) *Allocation amount; first-time homebuyers.* A Bank, in its discretion, may set aside annually, in the aggregate, up to the greater of \$4.5 million or 35% of the Bank's annual required AHP contribution to provide funds to members participating in homeownership set-aside programs, including a mortgage refinancing set-aside program established under paragraph (f) of this section, provided that at least one-third of the Bank's aggregate annual set-aside allocation to such programs shall be to assist first-time homebuyers, pursuant to the requirements of this part.

(ii) *No delegation.* A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility for adopting its homeownership set-aside program policies.

(3) *Additional funding.* A Bank may accelerate to its current year's program from future annual required AHP contributions an amount up to the greater of \$5 million or 20% of its an-

nual required AHP contribution for the current year. The Bank may credit the amount of the accelerated contribution against required AHP contributions under this part 1291 over one or more of the subsequent five years.

[71 FR 59286, Oct. 6, 2006 as amended at 73 FR 61664, Oct. 17, 2008; 74 FR 38521, Aug. 4, 2009]

§ 1291.3 AHP Implementation Plan.

(a) *Adoption; no delegation.* Each Bank, after consultation with its Advisory Council, shall adopt a written AHP Implementation Plan, and shall not amend the AHP Implementation Plan without first consulting its Advisory Council. The Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility to consult with the Advisory Council prior to adopting or amending the AHP Implementation Plan. The AHP Implementation Plan shall set forth, at a minimum:

(1) The applicable median income standard or standards adopted by the Bank consistent with the definition of median income for the area in § 1291.1 of this part;

(2) The Bank's requirements for its competitive application program established pursuant to § 1291.5 of this part;

(3) The Bank's requirements for its homeownership set-aside programs, if adopted by the Bank pursuant to § 1291.6 of this part;

(4) The Bank's requirements for funding revolving loan funds, if adopted by the Bank pursuant to § 1291.5(c)(13) of this part;

(5) The Bank's requirements for funding loan pools, if adopted by the Bank pursuant to § 1291.5(c)(14) of this part;

(6) The Bank's requirements for monitoring under its competitive application program and any Bank homeownership set-aside programs, pursuant to § 1291.7 of this part;

(7) The Bank's requirements, including time limits, for re-use of repaid AHP direct subsidy, if adopted by the Bank pursuant to § 1291.8(f)(2) of this part; and

(8) The retention agreement requirements for projects and households under the competitive application program and any Bank homeownership set-aside programs, pursuant to § 1291.9(a)(7) and (a)(8) of this part.

(b) *Advisory Council review.* Prior to the amendment of a Bank's AHP Implementation Plan, the Bank shall provide its Advisory Council an opportunity to review the document, and the Advisory Council shall provide its recommendations to the Bank's board of directors for its consideration.

(c) *Notification of Plan amendments to the FHFA.* A Bank shall notify the FHFA of any amendments made to its AHP Implementation Plan within 30 days after the date of their adoption by the Bank's board of directors.

(d) *Public access.* A Bank shall publish its current AHP Implementation Plan on its publicly available Web site, and shall publish any amendments to the AHP Implementation Plan on the Web site within 30 days after the date of their adoption by the Bank's board of directors.

§ 1291.4 Advisory Councils.

(a) *Appointment.* (1) Each Bank's board of directors shall appoint an Advisory Council of 7 to 15 persons who reside in the Bank's District and are drawn from community and not-for-profit organizations that are actively involved in providing or promoting low- and moderate-income housing, and community and not-for-profit organizations that are actively involved in providing or promoting community lending, in the District.

(2) Each Bank shall solicit nominations for membership on the Advisory Council from community and not-for-profit organizations pursuant to a nomination process that is as broad and as participatory as possible, allowing sufficient time for responses.

(3) The Bank's board of directors shall appoint Advisory Council members from a diverse range of organizations so that representatives of no one group constitute an undue proportion of the membership of the Advisory Council, giving consideration to the size of the Bank's District and the diversity of low- and moderate-income housing and community lending needs and activities within the District.

(b) *Terms of Advisory Council members.* Pursuant to policies adopted by the Bank's board of directors, Advisory Council members shall be appointed by the Bank's board of directors to serve

for terms of 3 years, which shall be staggered to provide continuity in experience and service to the Advisory Council, except that Advisory Council members may be appointed to serve for terms of 1 or 2 years solely for purposes of reconfiguring the staggering of the 3-year terms. No Advisory Council member may be appointed to serve for more than 3 full consecutive terms. An Advisory Council member appointed to fill a vacancy shall be appointed for the unexpired term of his or her predecessor in office.

(c) *Election of officers.* Each Advisory Council shall elect from among its members a chairperson, a vice chairperson, and any other officers the Advisory Council deems appropriate.

(d) *Duties—(1) Meetings with the Banks.* (i) The Advisory Council shall meet with representatives of the Bank's board of directors at least quarterly to provide advice on ways in which the Bank can better carry out its housing finance and community lending mission, including, but not limited to, advice on the low- and moderate-income housing and community lending programs and needs in the Bank's District, and on the use of AHP subsidies, Bank advances, and other Bank credit products for these purposes.

(ii) The Advisory Council's advice shall include recommendations on:

(A) The amount of AHP subsidies to be allocated to the Bank's competitive application program and any Bank homeownership set-aside programs;

(B) The AHP Implementation Plan and any subsequent amendments thereto;

(C) The scoring criteria, related definitions, and any additional optional District eligibility requirements for the competitive application program; and

(D) The eligibility requirements and any priority criteria for any Bank homeownership set-aside programs.

(2) *Summary of AHP applications.* The Bank shall comply with requests from the Advisory Council for summary information regarding AHP applications from prior funding periods.

(3) *Annual analysis; public access.* (i) Each Advisory Council annually shall

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submit to the FHFA by May 1 its analysis of the low- and moderate-income housing and community lending activity of the Bank by which it is appointed.

(ii) Within 30 days after the date the Advisory Council's annual analysis is submitted to the FHFA, the Bank shall publish the analysis on its publicly available Web site.

(e) *Expenses.* The Bank shall pay Advisory Council members' travel expenses, including transportation and subsistence, for each day devoted to attending meetings with representatives of the board of directors of the Bank and meetings requested by the FHFA.

(f) *No delegation.* A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility to appoint persons as members of the Advisory Council, or to meet with the Advisory Council at the quarterly meetings required by the Act (12 U.S.C. 1430(j)(11)).

§ 1291.5 Competitive application program.

(a) *Establishment of program.* A Bank shall establish a competitive application program pursuant to the requirements of this part.

(b) *Funding periods and application process—(1) Funding periods.* A Bank may accept applications for AHP subsidy under its competitive application program during a specified number of funding periods each year, as determined by the Bank.

(2) *Eligible applicants.* A Bank shall accept applications for AHP subsidy under its competitive application program only from institutions that are members of the Bank at the time the application is submitted to the Bank.

(3) *Submission of applications.* Except as provided in paragraph (c)(13)(i) of this section, a Bank shall require applications for AHP subsidy to contain information sufficient for the Bank to:

(i) Determine that the proposed AHP project meets the eligibility requirements of paragraph (c) of this section; and

(ii) Evaluate the application pursuant to the scoring guidelines adopted by the Bank pursuant to paragraph (d) of this section.

(4) *Review of applications submitted.* Except as provided in paragraph (c)(13)(ii) of this section, a Bank shall review the applications for AHP subsidy to determine that the proposed AHP project meets the eligibility requirements of paragraph (c) of this section, and shall evaluate the applications pursuant to the Bank's scoring guidelines adopted pursuant to paragraph (d) of this section.

(c) *Minimum eligibility requirements.* Projects receiving AHP subsidies pursuant to a Bank's competitive application program must meet the following eligibility requirements:

(1) *Owner-occupied or rental housing.* The AHP subsidy shall be used exclusively for:

(i) *Owner-occupied housing.* The purchase, construction, or rehabilitation of an owner-occupied project by or for very low-income or low- or moderate-income households. A household must have an income meeting the income targeting commitments in the approved AHP application at the time it is qualified by the project sponsor for participation in the project.

(ii) *Rental housing.* The purchase, construction, or rehabilitation of a rental project, where at least 20 percent of the units in the project are occupied by and affordable for very low-income households. A household must have an income meeting the income targeting commitments in the approved AHP application upon initial occupancy of the rental unit, or for projects involving the purchase or rehabilitation of rental housing that already is occupied, at the time the application for AHP subsidy is submitted to the Bank for approval.

(2) *Need for subsidy.* (i) The project's estimated sources of funds shall equal its estimated uses of funds, as reflected in the project's development budget. The difference between the project's sources of funds and uses of funds is the project's need for AHP subsidy, which is the maximum amount of AHP subsidy the project may receive. A Bank, in its discretion, may permit a project's sources of funds to include or exclude the estimated market value of in-kind donations and voluntary professional labor or services (excluding the value of sweat equity), provided

that the project's uses of funds also include or exclude, respectively, the value of such estimates.

(ii) A project's cash sources of funds shall include any cash contributions by the sponsor, any cash from sources other than the sponsor, and estimates of funds the project sponsor intends to obtain from other sources but which have not yet been committed to the project. In the case of homeownership projects where the sponsor extends permanent financing to the homebuyer, the sponsor's cash contribution shall include the present value of any payments the sponsor is to receive from the buyer, which shall include any cash down payment from the buyer, plus the present value of any purchase note the sponsor holds on the unit. If the note carries a market interest rate commensurate with the credit quality of the buyer, the present value of the note equals the face value of the note. If the note carries an interest rate below the market rate, the present value of the note shall be determined using the market rate to discount the cash flows.

(iii) A project's cash uses are the actual outlay of cash needed to pay for materials, labor, and acquisition or other costs of completing the project. Cash costs do not include in-kind donations, voluntary professional labor or services, or sweat equity.

(3) *Project costs*—(i) *In general.* (A) Taking into consideration the geographic location of the project, development conditions, and other non-financial household or project characteristics, a Bank shall determine that a project's costs, as reflected in the project's development budget, are reasonable, in accordance with the Bank's project cost guidelines.

(B) For purposes of determining the reasonableness of a developer's fee for a project as a percentage of total development costs, a Bank may, in its discretion, include estimates of the market value of in-kind donations and volunteer professional labor or services (excluding the value of sweat equity) committed to the project as part of the total development costs.

(ii) *Cost of property and services provided by a member.* The purchase price of property or services, as reflected in the project's development budget, sold

to the project by a member providing AHP subsidy to the project, or, in the case of property, upon which such member holds a mortgage or lien, may not exceed the market value of such property or services as of the date the purchase price was agreed upon. In the case of real estate owned property sold to a project by a member providing AHP subsidy to the project, or property sold to the project upon which the member holds a mortgage or lien, the market value of such property is deemed to be the "as-is" or "as-rehabilitated" value of the property, whichever is appropriate. That value shall be reflected in an independent appraisal of the property performed by a state certified or licensed appraiser, as defined in 12 CFR 564.2(j) and (k), within 6 months prior to the date the Bank disburses AHP subsidy to the project.

(4) *Project feasibility*—(i) *Developmental feasibility.* The project must be likely to be completed and occupied, based on relevant factors contained in the Bank's project feasibility guidelines, including, but not limited to, the development budget, market analysis, and project sponsor's experience in providing the requested assistance to households.

(ii) *Operational feasibility of rental projects.* A rental project must be able to operate in a financially sound manner, in accordance with the Bank's project feasibility guidelines, as projected in the project's operating *pro forma*.

(5) *Financing costs.* The rate of interest, points, fees, and any other charges for all loans that are made for the project in conjunction with the AHP subsidy shall not exceed a reasonable market rate of interest, points, fees, and other charges for loans of similar maturity, terms, and risk.

(6) *Timing of AHP subsidy use.* Some or all of the AHP subsidy must be likely to be drawn down by the project or used by the project to procure other financing commitments within 12 months of the date of approval of the application for AHP subsidy funding the project.

(7) *Counseling costs.* AHP subsidies may be used to pay for counseling costs only where:

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(i) Such costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit; and

(ii) The cost of the counseling has not been covered by another funding source, including the member.

(8) *Refinancing.* The project may use AHP subsidies to refinance an existing single-family or multi-family mortgage loan, provided that the refinancing produces equity proceeds and such equity proceeds up to the amount of the AHP subsidy in the project shall be used only for the purchase, construction, or rehabilitation of housing units meeting the eligibility requirements of this paragraph (c).

(9) *Retention*—(i) *Owner-occupied projects.* Each AHP-assisted unit in an owner-occupied project is, or is committed to be, subject to a 5-year retention agreement described in § 1291.9(a)(7) of this part.

(ii) *Rental projects.* AHP-assisted rental projects are, or are committed to be, subject to a 15-year retention agreement described in § 1291.9(a)(8) of this part.

(10) *Project sponsor qualifications*—(i) *In general.* A project's sponsor must be qualified and able to perform its responsibilities as committed to in the application for AHP subsidy funding the project.

(ii) *Revolving loan fund.* Pursuant to written policies adopted by a Bank's board of directors, a revolving loan fund sponsor that intends to use AHP direct subsidy in accordance with § 1291.5(c)(13) of this part shall:

(A) Provide audited financial statements that its operations are consistent with sound business practices; and

(B) Demonstrate the ability to re-lend AHP subsidy repayments on a timely basis and track the use of the AHP subsidy.

(iii) *Loan pool.* Pursuant to written policies adopted by a Bank's board of directors, a loan pool sponsor that intends to use AHP subsidy in accordance with § 1291.5(c)(14) of this part shall:

(A) Provide evidence of sound asset/liability management practices;

(B) Provide audited financial statements that its operations are con-

sistent with sound business practices; and

(C) Demonstrate the ability to track the use of the AHP subsidy.

(11) *Fair housing.* The project, as proposed, must comply with applicable federal and state laws on fair housing and housing accessibility, including, but not limited to, the Fair Housing Act, the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Architectural Barriers Act of 1969, and must demonstrate how the project will be affirmatively marketed.

(12) *Calculation of AHP subsidy.* (i) Where an AHP direct subsidy is provided to a project to write down the interest rate on a loan extended by a member, sponsor, or other party to a project, the net present value of the interest foregone from making the loan below the lender's market interest rate shall be calculated as of the date the application for AHP subsidy is submitted to the Bank, and subject to adjustment under paragraph (g)(4) of this section.

(ii) Where an AHP subsidized advance is provided to a project, the net present value of the interest revenue foregone from making a subsidized advance at a rate below the Bank's cost of funds shall be determined as of the earlier of the date of disbursement of the subsidized advance or the date prior to disbursement on which the Bank first manages the funding to support the subsidized advance through its asset/liability management system, or otherwise.

(13) *Lending and re-lending of AHP direct subsidy by revolving loan funds.* Pursuant to written policies established by a Bank's board of directors after consultation with its Advisory Council, a Bank, in its discretion, may provide AHP direct subsidy under its competitive application program for eligible projects and households involving both the lending of the subsidy and subsequent lending of subsidy principal and interest repayments by a revolving loan fund, provided the following requirements are met:

(i) *Submission of application.* (A) An application for AHP subsidy under this

paragraph (c)(13) shall include the revolving loan fund's criteria for the initial lending of the subsidy, identification of and information on a specific proposed AHP project if required in the Bank's discretion, the revolving loan fund's criteria for subsequent lending of subsidy principal and interest repayments, and any other information required by the Bank.

(B) The information in the application shall be sufficient for the Bank to:

(1) Determine that the criteria for the initial lending of the subsidy, the specific proposed project if applicable, and the criteria for subsequent lending of subsidy principal and interest repayments, meet the eligibility requirements of paragraph (c) of this section; and

(2) Evaluate the criteria for the initial lending of the subsidy, and the specific proposed project if applicable, pursuant to the scoring guidelines established by the Bank pursuant to paragraph (d) of this section.

(ii) *Review of application.* A Bank shall review the application for AHP subsidy to determine that the criteria for the initial lending of the subsidy, the specific proposed project if applicable, and the criteria for subsequent lending of subsidy principal and interest repayments, meet the eligibility requirements of paragraph (c) of this section, and shall evaluate the criteria for the initial lending of the subsidy and the specific proposed project, if applicable, pursuant to the scoring guidelines established by the Bank pursuant to paragraph (d) of this section.

(iii) *Initial lending of subsidy.* (A) The revolving loan fund's initial lending of the AHP subsidy shall meet the eligibility requirements of this paragraph (c), shall be to projects or households meeting the commitments in the approved application for AHP subsidy, and shall be subject to the requirements of §§ 1291.7(a) and 951.9 of this part, respectively.

(B) If a project or owner-occupied unit funded under this paragraph (c)(13)(iii) is in noncompliance with the commitments in the approved AHP application, or is sold or refinanced prior to the end of the applicable AHP retention period, the required amount of AHP subsidy shall be repaid to the re-

volving loan fund in accordance with §§ 1291.8 and 951.9 of this part, and the revolving loan fund shall re-lend such repaid subsidy, excluding the amounts of AHP subsidy principal already repaid to the revolving loan fund, to another project or owner-occupied unit meeting the initial lending requirements of this paragraph (c)(13)(iii) for the remainder of the retention period.

(iv) *Subsequent lending of AHP subsidy principal and interest repayments.* (A) AHP subsidy principal and interest repayments received by the revolving loan fund from the initial lending of the AHP direct subsidy shall be re-lent by the revolving loan fund in accordance with the requirements of this paragraph (c)(13)(iv), except that the revolving loan fund, in its discretion, may provide part or all of such repayments as nonrepayable grants to eligible projects in accordance with the requirements of this paragraph (c)(13)(iv).

(B) The revolving loan fund's subsequent lending of AHP subsidy principal and interest repayments shall be for the purchase, construction, or rehabilitation of owner-occupied projects for households with incomes at or below 80 percent of the median income for the area, or of rental projects where at least 20 percent of the units are occupied by and affordable for households with incomes at or below 50 percent of the median income for the area, and shall meet all other eligibility requirements of this paragraph (c).

(C) A Bank may, in its discretion, require the revolving loan fund's subsequent lending of subsidy principal and interest repayments to be subject to retention period, monitoring, and recapture requirements as defined by the Bank in its AHP Implementation Plan.

(v) *Return of unused AHP subsidy.* The revolving loan fund shall return to the Bank any AHP subsidy that will not be used according to the requirements in this paragraph (c)(13).

(14) *Use of AHP subsidy in loan pools.* Pursuant to written policies established by a Bank's board of directors after consultation with its Advisory Council, a Bank, in its discretion, may provide AHP subsidy under its competitive application program for the

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origination of first mortgage or rehabilitation loans with subsidized interest rates to AHP-eligible households through a purchase commitment by an entity that will purchase and pool the loans, provided the following requirements are met:

(i) *Eligibility requirements.* The loan pool sponsor's use of the AHP subsidies shall meet the requirements under this paragraph (c)(14), and shall not be used for the purpose of providing liquidity to the originator or holder of the loans, or paying the loan pool's operating or secondary market transaction costs.

(ii) *Forward commitment.* (A) The loan pool sponsor shall purchase the loans pursuant to a forward commitment that identifies the loans to be originated with interest-rate reductions as specified in the approved application for AHP subsidy to households with incomes at or below 80 percent of the median income for the area. Both initial purchases of loans for the AHP loan pool and subsequent purchases of loans to substitute for repaid loans in the pool shall be made pursuant to the terms of such forward commitment and subject to time limits on the use of the AHP subsidy as specified by the Bank in its AHP Implementation Plan and the Bank's agreement with the loan pool sponsor, which shall not exceed 1 year from the date of approval of the AHP application.

(B) As an alternative to using a forward commitment, the loan pool sponsor may purchase an initial round of loans that were not originated pursuant to an AHP-specific forward commitment, provided that the entities from which the loans were purchased are required to use the proceeds from the initial loan purchases within time limits on the use of the AHP subsidy as specified by the Bank in its AHP Implementation Plan and the Bank's agreement with the loan pool sponsor, which shall not exceed 1 year from the date of approval of the AHP application. The proceeds shall be used by such entities to assist households that are income-eligible under the approved AHP application during subsequent rounds of lending, and such assistance shall be provided in the form of a below-market AHP-subsidized interest

rate as specified in the approved AHP application.

(iii) Each AHP-assisted owner-occupied unit and rental project receiving AHP direct subsidy or a subsidized advance shall be subject to the requirements of § 1291.7(a), 951.8, and 951.9, respectively, of this part.

(iv) Where AHP direct subsidy is being used to buy down the interest rate of a loan or loans from a member or other party, the loan pool sponsor shall use the full amount of the AHP direct subsidy to buy down the interest rate on a permanent basis at the time of closing on such loan or loans.

(15) *Optional District eligibility requirements.* A Bank may require a project receiving AHP subsidies to meet one or more of the following additional eligibility requirements adopted by the Bank's board of directors and included in its AHP Implementation Plan after consultation with its Advisory Council:

(i) *AHP subsidy limits.* A requirement that the amount of AHP subsidy requested for the project does not exceed limits established by the Bank as to the maximum amount of AHP subsidy available per member each year, or per member, per project, or per project unit in a single funding period; or

(ii) *Homebuyer or homeowner counseling.* A requirement that a household must complete a homebuyer or homeowner counseling program provided by, or based on one provided by, an organization recognized as experienced in homebuyer or homeowner counseling, respectively.

(16) *Prohibited uses of AHP subsidies.* The project shall not use AHP subsidies to pay for:

(i) *Certain prepayment fees.* Prepayment fees imposed by a Bank on a member for a subsidized advance that is prepaid, unless:

(A) The project is in financial distress that cannot be remedied through a project modification pursuant to § 1291.5(f) of this part;

(B) The prepayment of the subsidized advance is necessary to retain the project's affordability and income targeting commitments;

(C) Subsequent to such prepayment, the project will continue to comply with the terms of the approved AHP application and the requirements of

this part for the duration of the original retention period;

(D) Any unused AHP subsidy is returned to the Bank and made available for other AHP projects; and

(E) The amount of AHP subsidy used for the prepayment fee may not exceed the amount of the member's prepayment fee to the Bank.

(ii) *Cancellation fees.* Cancellation fees and penalties imposed by a Bank on a member for a subsidized advance commitment that is canceled.

(iii) *Processing fees.* Processing fees charged by members for providing AHP direct subsidies to a project.

(d) *Scoring of applications*—(1) *In general.* A Bank shall establish written scoring guidelines setting forth the Bank's AHP competitive application program scoring criteria and related definitions and point allocations, and implementing other applicable requirements pursuant to this paragraph (d). A Bank shall not adopt additional scoring criteria or point allocations, except as specifically authorized under this paragraph (d).

(2) *Point allocations.* (i) A Bank shall allocate 100 points among the 9 scoring criteria identified in paragraph (d)(5) of this section.

(ii) The scoring criterion for targeting identified in paragraph (d)(5)(iii) of this section shall be allocated at least 20 points.

(iii) The remaining scoring criteria shall be allocated at least 5 points each.

(3) *Fixed point and variable point scoring criteria.* A Bank shall designate each scoring criterion as either a fixed-point or a variable-point criterion, defined as follows:

(i) Fixed-point scoring criteria are those which cannot be satisfied in varying degrees and are either satisfied or not, with the total number of points allocated to the criterion awarded by the Bank to an application meeting the criterion; and

(ii) Variable-point criteria are those where there are varying degrees to which an application can satisfy the criteria, with the number of points that may be awarded to an application for meeting the criterion varying, depending on the extent to which the application satisfies the criterion, based

on a fixed scale or on a scale relative to the other applications being scored. A Bank shall designate the targeting and subsidy-per-unit scoring criteria identified in paragraphs (d)(5)(iii) and (d)(5)(viii), respectively, of this section, as variable-point criteria.

(4) *Satisfaction of scoring criteria.* A Bank shall award scoring points to applications for proposed projects based on satisfaction of the scoring criteria adopted by the Bank pursuant to paragraph (d)(5) of this section.

(5) *Scoring criteria.* An application for a proposed project may receive scoring points based on satisfaction of the following 9 scoring criteria:

(i) *Use of donated or conveyed government-owned or other properties.* The financing of housing using a significant proportion, as defined by the Bank in its AHP Implementation Plan, of:

(A) Land or units donated or conveyed by the federal government or any agency or instrumentality thereof; or

(B) Land or units donated or conveyed by any other party for an amount significantly below the fair market value of the property, as defined by the Bank in its AHP Implementation Plan.

(ii) *Sponsorship by a not-for-profit organization or government entity.* Project sponsorship by a not-for-profit organization, a state or political subdivision of a state, a state housing agency, a local housing authority, a Native American Tribe, an Alaskan Native Village, or the government entity for Native Hawaiian Home Lands.

(iii) *Targeting.* The extent to which a project provides housing for very low- and low- or moderate-income households, as follows:

(A) *Rental projects.* An application for a rental project shall be awarded the maximum number of points available under this scoring criterion if 60 percent or more of the units in the project are reserved for occupancy by households with incomes at or below 50 percent of the median income for the area. Applications for projects with less than 60 percent of the units reserved for occupancy by households with incomes at or below 50 percent of the median income for the area shall be awarded points on a declining scale based on the

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percentage of units in a project that are reserved for households with incomes at or below 50 percent of the median income for the area, and on the percentage of the remaining units reserved for households with incomes at or below 80 percent of the median income for the area.

(B) *Owner-occupied projects.* Applications for owner-occupied projects shall be awarded points based on a declining scale to be determined by the Bank in its AHP Implementation Plan, taking into consideration percentages of units and targeted income levels.

(C) *Separate scoring.* For purposes of this scoring criterion, applications for owner-occupied projects and rental projects may be scored separately.

(iv) *Housing for homeless households.* The financing of rental housing, excluding overnight shelters, reserving at least 20 percent of the units for homeless households, the creation of transitional housing for homeless households permitting a minimum of 6 months occupancy, or the creation of permanent owner-occupied housing reserving at least 20 percent of the units for homeless households, with the term "homeless households" as defined by the Bank in its AHP Implementation Plan.

(v) *Promotion of empowerment.* The provision of housing in combination with a program offering: employment; education; training; homebuyer, homeownership, or tenant counseling; daycare services; resident involvement in decision making affecting the creation or operation of the project; or other services that assist residents to move toward better economic opportunities, such as welfare to work initiatives.

(vi) *First District priority.* The satisfaction of one of the following criteria, or one of a number of the following criteria, adopted by the Bank and set forth in the Bank's AHP Implementation Plan, as long as the total points available for meeting the criterion or criteria adopted under this category do not exceed the total points allocated to this category:

(A) *Special needs.* The financing of housing in which at least 20 percent of the units are reserved for occupancy by households with special needs, such as the elderly, mentally or physically dis-

abled persons, persons recovering from physical abuse or alcohol or drug abuse, or persons with AIDS; or the financing of housing that is visitable by persons with physical disabilities who are not occupants of such housing;

(B) *Community development.* The financing of housing meeting housing needs documented as part of a community revitalization or economic development strategy approved by a unit of a state or local government;

(C) *First-time homebuyers.* The financing of housing for first-time homebuyers;

(D) *Member financial participation.* Member financial participation (excluding the pass-through of AHP subsidy) in the project, such as providing market rate or concessionary financing, fee waivers, or donations;

(E) *Disaster areas and displaced households.* The financing of housing located in federally declared disaster areas, or for households displaced from federally declared disaster areas due to a disaster;

(F) *Rural.* The financing of housing located in rural areas;

(G) *Urban.* The financing of urban infill or urban rehabilitation housing;

(H) *Economic diversity.* The financing of housing that is part of a strategy to end isolation of very low-income households by providing economic diversity through mixed-income housing in low- or moderate-income neighborhoods, or providing very low- or low- or moderate-income households with housing opportunities in neighborhoods or cities where the median income equals or exceeds the median income for the larger surrounding area, such as the city, county, or Primary Metropolitan Statistical Area, in which the neighborhood or city is located;

(I) *Fair housing remedy.* The financing of housing as part of a remedy undertaken by a jurisdiction adjudicated by a Federal, State, or local court to be in violation of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), the Fair Housing Act (42 U.S.C. 3601 *et seq.*), or any other Federal, State, or local fair housing law, or as part of a settlement of such claims;

(J) *Community involvement.* Demonstrated support for the project by local government, other than as a

project sponsor, in the form of property tax deferment or abatement, zoning changes or variances, infrastructure improvements, fee waivers, or other similar forms of non-cash assistance, or demonstrated support for the project by community organizations or individuals, other than as project sponsors, through the commitment by such entities or individuals of donated goods and services, or volunteer labor;

(K) *Lender consortia*. The involvement of financing by a consortium of at least 2 financial institutions; or

(L) *In-District projects*. The financing of housing located in the Bank's District.

(vii) *Second District priority: Defined housing needs in the District*. The satisfaction of one or more housing needs in the Bank's District, as defined by the Bank in its AHP Implementation Plan. The Bank may, but is not required to, use one of the criteria listed in paragraph (d)(5)(vi) of this section, provided it is different from the criterion or criteria adopted by the Bank under such paragraph.

(viii) *AHP subsidy per unit*—(A) *Amount of subsidy*. The extent to which a project proposes to use the least amount of AHP subsidy per AHP-targeted unit. In the case of an application for a project financed by a subsidized advance, the total amount of AHP subsidy used by the project shall be estimated based on the Bank's cost of funds as of the date on which all applications are due for the funding period in which the application is submitted.

(B) *Separate scoring*. For purposes of this scoring criterion, applications for owner-occupied projects and rental projects may be scored separately.

(ix) *Community stability*. The promotion of community stability, such as by rehabilitating vacant or abandoned properties, being an integral part of a neighborhood stabilization plan approved by a unit of state or local government, and not displacing low- or moderate-income households, or if such displacement will occur, assuring that such households will be assisted to minimize the impact of such displacement.

(e) *Approval of AHP applications*. (1) A Bank shall approve applications for

AHP subsidy in descending order starting with the highest scoring application until the total funding amount for the particular funding period, except for any amount insufficient to fund the next highest scoring application, has been allocated.

(2) The Bank also shall approve at least the next 4 highest scoring applications as alternates and, within 1 year of approval, may fund such alternates if any previously committed AHP subsidies become available.

(f) *Modifications of approved AHP applications*—(1) *Modification procedure*. If, prior to or after final disbursement of funds to a project from all funding sources, there is or will be a change in the project that would change the score that the project application received in the funding period in which it was originally scored and approved, had the changed facts been operative at that time, a Bank, in its discretion, may approve in writing a modification to the terms of the approved application, provided that:

(i) The project, incorporating any such changes, would meet the eligibility requirements of paragraph (c) of this section;

(ii) The application, as reflective of such changes, continues to score high enough to have been approved in the funding period in which it was originally scored and approved by the Bank; and

(iii) There is good cause for the modification, and the analysis and justification for the modification are documented by the Bank in writing.

(2) *AHP subsidy increases; no delegation*. Modifications involving an increase in AHP subsidy shall be approved or disapproved by a Bank's board of directors. The authority to approve or disapprove such requests shall not be delegated to Bank officers or other Bank employees.

(g) *Procedure for funding*—(1) *Disbursement of AHP subsidies to members*. (i) A Bank may disburse AHP subsidies only to institutions that are members of the Bank at the time they request a draw-down of the subsidies.

(ii) If an institution with an approved application for AHP subsidy loses its membership in a Bank, the Bank may disburse AHP subsidies to a member of

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such Bank to which the institution has transferred its obligations under the approved AHP application, or the Bank may disburse AHP subsidies through another Bank to a member of that Bank that has assumed the institution's obligations under the approved AHP application.

(2) *Progress towards use of AHP subsidy.* A Bank shall establish and implement policies, including time limits, for determining whether progress is being made towards draw-down and use of AHP subsidies by approved projects, and whether to cancel AHP application approvals for lack of such progress. If a Bank cancels any AHP application approvals due to lack of such progress, the Bank shall make the AHP subsidies available for other AHP-eligible projects.

(3) *Compliance upon disbursement of AHP subsidies.* A Bank shall establish and implement policies for determining, prior to its initial disbursement of AHP subsidies for an approved project, and prior to each subsequent disbursement if the need for AHP subsidy has changed, that the project meets the eligibility requirements of paragraph (c) of this section and all obligations committed to in the approved AHP application. If a Bank cancels any AHP application approvals due to non-compliance with eligibility requirements of paragraph (c) of this section, the Bank shall make the AHP subsidies available for other AHP-eligible projects.

(4) *Changes in approved AHP subsidy amount where a direct subsidy is used to write down prior to closing the principal amount or interest rate on a loan.* If a member is approved to receive AHP direct subsidy to write down prior to closing the principal amount or the interest rate on a loan to a project, and the amount of AHP subsidy required to maintain the debt service cost for the loan decreases from the amount of AHP subsidy initially approved by the Bank due to a decrease in market interest rates between the time of approval and the time the lender commits to the interest rate to finance the project, the Bank shall reduce the AHP subsidy amount accordingly. If market interest rates rise between the time of approval and the time the lender com-

mits to the interest rate to finance the project, the Bank, in its discretion, may increase the AHP subsidy amount accordingly.

(5) *AHP outlay adjustment.* If a Bank reduces the amount of AHP subsidy approved for a project, the amount of such reduction shall be returned to the Bank's AHP fund. If a Bank increases the amount of AHP subsidy approved for a project, the amount of such increase shall be drawn first from any currently uncommitted or repaid AHP subsidies and then from the Bank's required AHP contribution for the next year.

(6) *Project sponsor notification of reuse of repaid AHP direct subsidy.* Prior to disbursement by a project sponsor of AHP direct subsidy repaid to and retained by such project sponsor pursuant to a subsidy re-use program authorized by the Bank under § 1291.8(f)(2) of this part, the project sponsor shall provide written notice to the member and the Bank of its intent to disburse the repaid AHP subsidy to a household satisfying the requirements of this part and the commitments made in the approved AHP application.

(h) *Bank board duties and delegation—*

(1) *Duties.* A Bank's board of directors, after consultation with its Advisory Council, shall be responsible for:

(i) Adoption of the AHP Implementation Plan required pursuant to § 1291.3 of this part; and

(ii) Approving or disapproving the applications for AHP subsidy pursuant to § 1291.5(e) of this part.

(2) *No delegation.* The Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibilities set forth in paragraph (h)(1) of this section.

[71 FR 59286, Oct. 6, 2006, as amended at 74 FR 38522, Aug. 4, 2009]

§ 1291.6 Homeownership set-aside programs.

(a) *Establishment of program.* A Bank may establish one or more homeownership set-aside programs pursuant to the requirements of this part.

(b) *Eligible applicants.* A Bank shall accept applications for AHP direct subsidy under its homeownership set-aside programs only from institutions that are members of the Bank at the time

the application is submitted to the Bank.

(c) *Minimum eligibility requirements.* A Bank's homeownership set-aside programs shall meet the following eligibility requirements:

(1) *Member allocation criteria.* AHP direct subsidies shall be provided to members pursuant to allocation criteria established by the Bank in its AHP Implementation Plan.

(2) *Eligible households.* Members shall provide AHP direct subsidies only to households that:

(i) Have incomes at or below 80 percent of the median income for the area at the time the household is accepted for enrollment by the member in the Bank's homeownership set-aside program, with such time of enrollment by the member defined by the Bank in its AHP Implementation Plan;

(ii) Complete a homebuyer or homeowner counseling program provided by, or based on one provided by, an organization experienced in homebuyer or homeowner counseling, in the case of households that are first-time homebuyers; and

(iii) Are first-time homebuyers, in the case of households receiving funds pursuant to the first-time homebuyer requirement in §1291.2(b)(2) of this part, and meet such other eligibility criteria that may be established by the Bank in its AHP Implementation Plan, such as a matching funds requirement, homebuyer or homeowner counseling requirement for households that are not first-time homebuyers, or criteria that give priority for the purchase or rehabilitation of housing in particular areas or as part of a disaster relief effort.

(3) *Maximum grant amount.* Members shall provide AHP direct subsidies to households as a grant, in an amount up to a maximum of \$15,000 per household, as established by the Bank in its AHP Implementation Plan, which limit shall apply to all households.

(4) *Eligible uses of AHP direct subsidy.* Households shall use the AHP direct subsidies to pay for down payment, closing cost, counseling, or rehabilitation assistance in connection with the household's purchase or rehabilitation of an owner-occupied unit, including a condominium or cooperative housing

unit or manufactured housing, to be used as the household's primary residence.

(5) *Retention agreement.* An owner-occupied unit purchased or rehabilitated using AHP direct subsidy shall be subject to a 5-year retention agreement described in §1291.9(a)(7) of this part.

(6) *Financial or other concessions.* The Bank may, in its discretion, require members and other lenders to provide financial or other concessions, as defined by the Bank in its AHP Implementation Plan, to households in connection with providing the AHP direct subsidy or financing to the household.

(7) *Financing costs.* The rate of interest, points, fees, and any other charges for all loans made in conjunction with the AHP direct subsidy shall not exceed a reasonable market rate of interest, points, fees, and other charges for loans of similar maturity, terms, and risk.

(8) *Counseling costs.* The AHP direct subsidies may be used to pay for counseling costs only where:

(i) Such costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit; and

(ii) The cost of the counseling has not been covered by another funding source, including the member.

(9) *Cash back to household.* A member may provide cash back to a household at closing on the mortgage loan in an amount not exceeding \$250, as determined by the Bank in its AHP Implementation Plan, and a member shall use any AHP direct subsidy exceeding such amount that is beyond what is needed at closing for closing costs and the approved mortgage amount as a credit to reduce the principal of the mortgage loan or as a credit toward the household's monthly payments on the mortgage loan.

(d) *Approval of AHP applications.* A Bank shall approve applications for AHP direct subsidy in accordance with the Bank's criteria governing the allocation of funds.

(e) *Procedure for funding—(1) Disbursement of AHP direct subsidies to members.*

(i) A Bank may disburse AHP direct subsidies only to institutions that are members of the Bank at the time they request a draw-down of the subsidies.

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(ii) If an institution with an approved application for AHP direct subsidy loses its membership in a Bank, the Bank may disburse AHP direct subsidies to a member of such Bank to which the institution has transferred its obligations under the approved AHP application, or the Bank may disburse AHP direct subsidies through another Bank to a member of that Bank that has assumed the institution's obligations under the approved AHP application.

(2) *Reservation of homeownership set-aside subsidies.* A Bank shall establish and implement policies for reservation of homeownership set-aside subsidies for households enrolled in the Bank's homeownership set-aside program. The policies shall provide that set-aside subsidies be reserved no more than 2 years in advance of the Bank's time limit in its AHP Implementation Plan for draw-down and use of the subsidies by the household and the reservation of subsidies be made from the set-aside allocation of the year in which the Bank makes the reservation.

(3) *Progress towards use of AHP direct subsidy.* A Bank shall establish and implement policies, including time limits, for determining whether progress is being made towards draw-down and use of the AHP direct subsidies by eligible households, and whether to cancel AHP application approvals for lack of such progress. If a Bank cancels any AHP application approvals due to lack of such progress, it shall make the AHP direct subsidies available for other applicants for AHP direct subsidies under the homeownership set-aside program or for other AHP-eligible projects.

(f) *Mortgage refinancing program—(1) General.* A Bank may establish a homeownership set-aside program for the use of AHP direct subsidy by its members to assist in the refinancing of a household's mortgage loan, provided such program meets the requirements of this paragraph (f) and otherwise meets the requirements of regulations in this part. The provisions of paragraphs (c)(2)(ii), (c)(2)(iii), (c)(4), (c)(6) and (c)(8) of this section, shall not apply to such program.

(2) *Eligible loans.* A loan is eligible to be refinanced with AHP direct subsidy if the loan is secured by a first mort-

gage on an owner-occupied unit that is the primary residence of the household, and the loan is refinanced under an eligible targeted refinancing program.

(3) *Eligible uses of AHP direct subsidy.* Members may provide the AHP direct subsidy to:

(i) Reduce the outstanding principal balance of the loan by no more than the amount necessary for the new loan to qualify under both the maximum loan-to-value ratio and the maximum household mortgage debt-to-income ratio required by the eligible targeted refinancing program; or

(ii) Pay loan closing costs.

(4) *Eligible lender participants.* A Bank, in its discretion, may require that a household obtain its refinancing loan through a member participating in an eligible targeted refinancing program.

(5) *Counseling.* Prior to enrollment in an AHP set-aside refinancing program established under this paragraph (f), a household must obtain counseling for foreclosure mitigation and for qualification for refinancing by an eligible targeted refinancing program through the National Foreclosure Mitigation Counseling program or other counseling program used by a State or local government or housing finance agency.

(6) *Sunset.* (i) This paragraph (f) shall expire on July 30, 2010, and a Bank may not commit AHP subsidy to households under its AHP set-aside refinancing program after such date.

(ii) A lender may use the AHP subsidy committed by such date for a loan submitted to the eligible targeted refinancing program for approval on or before July 30, 2010 that is approved for refinancing under such program after such date.

[71 FR 59286, Oct. 6, 2006, as amended at 73 FR 61664, Oct. 17, 2008; 74 FR 38522, Aug. 4, 2009]

§ 1291.7 Monitoring.

(a) *Competitive application program—(1) Initial monitoring policies for owner-occupied and rental projects—(i)—Adoption and implementation.* Pursuant to written policies established by a Bank, the Bank shall monitor each AHP owner-occupied and rental project under its competitive application program prior to, and within a reasonable

period of time after, project completion to determine, at a minimum, whether:

(A) The project is making satisfactory progress towards completion, in compliance with the commitments made in the approved AHP application, Bank policies, and the requirements of this part;

(B) Following completion of the project, satisfactory progress is being made towards occupancy of the project by eligible households; and

(C) Within a reasonable period of time after project completion, the project meets the following requirements, at a minimum:

(1) The AHP subsidies were used for eligible purposes according to the commitments made in the approved AHP application;

(2) The household incomes and rents comply with the income targeting and rent commitments made in the approved AHP application;

(3) The project's actual costs were reasonable in accordance with the Bank's project cost guidelines, and the AHP subsidies were necessary for the completion of the project as currently structured;

(4) Each AHP-assisted unit of an owner-occupied project and rental project is subject to AHP retention agreements that meet the requirements of §1291.9(a)(7) or (a)(8), respectively, of this part; and

(5) The services and activities committed to in the approved AHP application have been provided in connection with the project.

(ii) *Back-up and other project documentation.* The Bank's written monitoring policies shall include requirements for:

(A) Bank review of back-up project documentation regarding household incomes and rents maintained by the project sponsor or owner; and

(B) Maintenance and Bank review of other project documentation in the Bank's discretion.

(iii) *Sampling plan.* The Bank shall not use a sampling plan to select the projects to be monitored under this paragraph (a)(1), but may use a reasonable risk-based sampling plan to review the back-up project documentation.

(2) *Reliance on long-term tax credit monitoring for rental projects.* For completed AHP rental projects that have been allocated federal Low-Income Housing Tax Credits (tax credits), a Bank may, in its discretion, for purposes of long-term AHP monitoring under its competitive application program, rely on the monitoring by the state-designated housing credit agency administering the tax credits of the income targeting and rent requirements applicable under the Low-Income Housing Tax Credit Program, and the Bank need not obtain and review reports from such agency or otherwise monitor the projects' long-term AHP compliance.

(3) *Reliance on other long-term governmental monitoring for rental projects.* For completed AHP rental projects that received funds other than tax credits from federal, state, or local government entities, a Bank may, in its discretion, for purposes of long-term AHP monitoring under its competitive application program, rely on the monitoring by such entities of the income targeting and rent requirements applicable under their programs, provided that the Bank can show that:

(i) The compliance profiles regarding income targeting, rent, and retention period requirements of the AHP and the other programs are substantively equivalent;

(ii) The entity has demonstrated and continues to demonstrate its ability to monitor the project;

(iii) The entity agrees to provide reports to the Bank on the project's incomes and rents for the full 15-year AHP retention period; and

(iv) The Bank reviews the reports from the monitoring entity to confirm that they comply with the Bank's monitoring policies.

(4) *Long-term monitoring policies for rental projects—(i) Adoption and implementation.* In cases where a Bank does not rely on monitoring by a federal, state, or local government entity pursuant to paragraphs (a)(2) or (a)(3) of this section, pursuant to written policies established by the Bank, the Bank shall monitor completed AHP rental projects under its competitive application program, commencing in the second year after project completion to

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determine, at a minimum, whether during the full 15-year retention period, the household incomes and rents comply with the income targeting and rent commitments, respectively, made in the approved AHP applications.

(ii) *Annual project owner certifications; backup and other project documentation.* A Bank's written monitoring policies shall include requirements for:

(A) Bank review of annual certifications by project owners to the Bank that household incomes and rents are in compliance with the commitments made in the approved AHP application;

(B) Bank review of back-up project documentation regarding household incomes and rents maintained by the project owner; and

(C) Maintenance and Bank review of other project documentation in the Banks' discretion.

(iii) *Risk factors and other monitoring—(A) Risk factors; other monitoring.* A Bank's written monitoring policies shall take into account risk factors such as the amount of AHP subsidy in the project, type of project, size of project, location of project, sponsor experience, and any monitoring of the project provided by a federal, state, or local government entity.

(B) *Risk-based sampling plan.* A Bank may use a reasonable, risk-based sampling plan to select the rental projects to be monitored under this paragraph (a)(4), and to review the annual project owner certifications, back-up, and any other project documentation. The risk-based sampling plan and its basis shall be in writing.

(5) *Annual adjustment of targeting commitments.* For purposes of determining compliance with the targeting commitments in an approved AHP application for both initial and long-term AHP monitoring purposes under a Bank's competitive application program, such commitments shall be considered to adjust annually according to the current applicable median income data. A rental unit may continue to count toward meeting the targeting commitment of an approved AHP application as long as the rent charged to a household remains affordable, as defined in § 1291.1 of this part, for the household occupying the unit.

(b) *Homeownership set-aside programs: Monitoring policies—(1) Adoption and implementation.* Pursuant to written policies adopted by a Bank, the Bank shall monitor compliance with the requirements of its homeownership set-aside programs, including monitoring to determine, at a minimum, whether:

(i) The AHP subsidy was provided to households meeting all applicable eligibility requirements in § 1291.6(c)(2) of this part and the Bank's homeownership set-aside program policies; and

(ii) All other applicable eligibility requirements in § 1291.6(c) and § 1291.6(f) of this part and the Bank's homeownership set-aside program policies are met, including that the AHP-assisted units are subject to retention agreements required under § 1291.6(c)(5) of this part.

(2) *Member certifications; back-up and other documentation.* The Bank's written monitoring policies shall include requirements for:

(i) Bank review of certifications by members to the Bank, prior to disbursement of the AHP subsidy, that the subsidy will be provided in compliance with all applicable eligibility requirements in § 1291.6(c) and § 1291.6(f) of this part;

(ii) Bank review of back-up documentation regarding household incomes maintained by the member; and

(iii) Maintenance and Bank review of other documentation in the Bank's discretion.

(3) *Sampling plan.* The Bank may use a reasonable sampling plan to select the households to be monitored, and to review the back-up and any other documentation received by the Bank, but not the member certifications required in paragraph (b)(2) of this section. The sampling plan and its basis shall be in writing.

[71 FR 59286, Oct. 6, 2006, as amended at 73 FR 61664, Oct. 17, 2008]

§ 1291.8 Remedial actions for non-compliance.

(a) *Recovery of AHP subsidies.* A Bank shall recover the amount of any AHP subsidies (plus interest, if appropriate) that are not used in compliance with the commitments made in the approved application for AHP subsidy and the requirements of this part, if the

misuse is the result of the actions or omissions of the member, the project sponsor, or the project owner.

(b) *Responsible party for repayment of AHP subsidies.* Except as provided in paragraph (c) of this section:

(1) If the member causes the AHP subsidies to be misused through its actions or omissions, the member shall repay the AHP subsidies to the Bank.

(2) If the project sponsor or owner causes the AHP subsidies to be misused through its actions or omissions, the following shall apply, as determined by the Bank in its discretion:

(i) The member shall recover the AHP subsidies from the project sponsor or owner and repay them to the Bank; or

(ii) The project sponsor or owner shall repay the AHP subsidies directly to the Bank.

(c) *Recovery not required.* Recovery of the AHP subsidies is not required if:

(1) The member, project sponsor, or project owner cures the noncompliance within a reasonable period of time;

(2) The circumstances of noncompliance are eliminated through a modification of the terms of the approved application for AHP subsidy pursuant to § 1291.5(f) of this part; or

(3) The member is unable to collect the AHP subsidy after making reasonable efforts to collect it.

(d) *Settlements.* A Bank may settle a claim for AHP subsidies that it has against a member, project sponsor, or project owner for less than the full amount due. If a Bank enters into such a settlement, the FHFA may require the Bank to reimburse its AHP fund in the amount of any shortfall under paragraph (e)(2) of this section, unless:

(1) The Bank has sufficient documentation showing that the sum agreed to be repaid under the settlement is reasonably justified, based on the facts and circumstances of the noncompliance (including the degree of culpability of the non-complying parties and the extent of the Bank's recovery efforts); or

(2) The Bank obtains a determination from the FHFA that the sum agreed to be repaid under the settlement is reasonably justified, based on the facts and circumstances of the noncompliance (including the degree of culpa-

bility of the non-complying parties and the extent of the Bank's recovery efforts).

(e) *Reimbursement of AHP fund—*(1) *By the Bank.* A Bank shall reimburse its AHP fund in the amount of any AHP subsidies (plus interest, if appropriate) misused as a result of the actions or omissions of the Bank.

(2) *By FHFA order.* The FHFA may order a Bank to reimburse its AHP fund in an appropriate amount upon determining that:

(i) The Bank has failed to reimburse its AHP fund as required under paragraph (e)(1) of this section; or

(ii) The Bank has failed to recover AHP subsidy from a member, project sponsor, or project owner pursuant to the requirements of paragraph (a) of this section, and has not shown that such failure is reasonably justified, considering factors such as the extent of the Bank's recovery efforts.

(f) *Use of repaid AHP subsidies—*(1) *Use of repaid AHP subsidies in other AHP-eligible projects.* Except as provided in paragraph (f)(2) of this section, amounts of AHP subsidy, including any interest, repaid to a Bank pursuant to this part shall be made available by the Bank for other AHP-eligible projects.

(2) *Re-use of repaid AHP direct subsidies in same project—*(i) *Requirements.* AHP direct subsidy, including any interest, repaid to a member or project sponsor under a homeownership set-aside program or the competitive application program, respectively, may be repaid by such parties to the Bank for subsequent disbursement to and re-use by such parties, or retained by such parties for subsequent re-use, as authorized by the Bank, in its discretion, after consultation with its Advisory Council, in its AHP Implementation Plan, provided all of the following requirements are satisfied:

(A) The member or the project sponsor originally provided the AHP direct subsidy as down payment, closing cost, rehabilitation, or interest rate buy down assistance to an eligible household to purchase or rehabilitate an owner-occupied unit pursuant to an approved AHP application;

(B) The AHP direct subsidy, including any interest, was repaid to the member or project sponsor as a result

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of a sale by the household of the unit prior to the end of the retention period to a purchaser that is not a low-or moderate-income household; and

(C) The repaid AHP direct subsidy is made available by the member or project sponsor, within the period of time specified by the Bank in its AHP Implementation Plan, to another AHP-eligible household to purchase or rehabilitate an owner-occupied unit in the same project in accordance with the terms of the approved AHP application.

(ii) *No delegation.* A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility to adopt any Bank policies on re-use of repaid AHP direct subsidies in the same project pursuant to paragraph (f)(2)(i) of this section.

(g) *Suspension and debarment*—(1) *At a Bank's initiative.* A Bank may suspend or debar a member, project sponsor, or project owner from participation in the Program if such party shows a pattern of noncompliance, or engages in a single instance of flagrant noncompliance, with the terms of an approved application for AHP subsidy or the requirements of this part.

(2) *At the FHFA's initiative.* The FHFA may order a Bank to suspend or debar a member, project sponsor, or project owner from participation in the Program if such party shows a pattern of noncompliance, or engages in a single instance of flagrant noncompliance, with the terms of an approved application for AHP subsidy or the requirements of this part.

(h) *Transfer of Program administration.* Without limitation on other remedies, the FHFA, upon determining that a Bank has engaged in mismanagement of its Program, may designate another Bank to administer all or a portion of the first Bank's annual AHP contribution, for the benefit of the first Bank's members, under such terms and conditions as the FHFA may prescribe.

(i) *FHFA actions under this section.* Except as provided in paragraph (d)(2) of this section, actions taken by the FHFA under this section are reviewable under § 907.9 of this chapter.

§ 1291.9 Agreements.

(a) *Agreements between Banks and members.* A Bank shall have in place

with each member receiving an AHP subsidized advance or AHP direct subsidy an agreement or agreements containing, at a minimum, the following provisions, where applicable:

(1) *Notification of member.* The member has been notified of the requirements of this part as they may be amended from time to time, and all Bank policies relevant to the member's approved application for AHP subsidy.

(2) *AHP subsidy pass-through.* The member shall pass on the full amount of the AHP subsidy to the project or household, as applicable, for which the subsidy was approved.

(3) *Use of AHP subsidy*—(i) *Use of AHP subsidy by the member.* The member shall use the AHP subsidy in accordance with the terms of the member's approved application for the subsidy and the requirements of this part.

(ii) *Use of AHP subsidy by the project sponsor or owner.* The member shall have in place an agreement with each project sponsor or project owner in which the project sponsor or project owner agrees to use the AHP subsidy in accordance with the terms of the member's approved application for the subsidy and the requirements of this part.

(4) *Repayment of AHP subsidies in case of noncompliance*—(i) *Noncompliance by the member.* The member shall repay AHP subsidies to the Bank in accordance with the requirements of § 1291.8(b)(1) of this part.

(ii) *Noncompliance by a project sponsor or owner*—(A) *Agreement.* The member shall have in place an agreement with each project sponsor or project owner in which the project sponsor or project owner agrees to repay AHP subsidies to the member or the Bank in accordance with the requirements of § 1291.8(b)(2)(i) or (b)(2)(ii) of this part, respectively (as applicable).

(B) *Recovery of AHP subsidies.* The member shall recover from the project sponsor or project owner and repay to the Bank any AHP subsidy in accordance with the requirements of § 1291.8(b)(2)(i) of this part (if applicable).

(5) *Project monitoring*—(i) *Monitoring by the member.* The member shall comply with the monitoring requirements applicable to it, as established by the

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Bank in its monitoring policies pursuant to § 1291.7 of this part.

(ii) *Agreement.* The member shall have in place an agreement with each project sponsor and project owner, in which the project sponsor and project owner agree to comply with the monitoring requirements applicable to such parties, as established by the Bank in its monitoring policies pursuant to § 1291.7 of this part.

(6) *Transfer of AHP obligations*—(i) *To another member.* The member shall make best efforts to transfer its obligations under the approved application for AHP subsidy to another member in the event of its loss of membership in the Bank prior to the Bank's final disbursement of AHP subsidies.

(ii) *To a nonmember.* If, after final disbursement of AHP subsidies to the member, the member undergoes an acquisition or a consolidation resulting in a successor organization that is not a member of the Bank, the nonmember successor organization assumes the member's obligations under its approved application for AHP subsidy, and where the member received an AHP subsidized advance, the nonmember assumes such obligations until prepayment or orderly liquidation by the nonmember of the subsidized advance.

(7) *Retention agreements for owner-occupied units.* The member shall ensure that an AHP-assisted owner-occupied unit is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(i) The Bank or its designee is to be given notice of any sale or refinancing of the unit occurring prior to the end of the retention period;

(ii) In the case of a sale or refinancing of the unit prior to the end of the retention period, an amount equal to a pro rata share of the AHP subsidy that financed the purchase, construction, or rehabilitation of the unit, reduced for every year the seller owned the unit, shall be repaid to the Bank from any net gain realized upon the sale or refinancing, unless:

(A) The unit was assisted with a permanent mortgage loan funded by an AHP subsidized advance;

(B) The unit is sold to a very low-, or low- or moderate-income household; or

(C) Following a refinancing, the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism described in this paragraph (a)(7); and

(iii) In the case of a direct subsidy, such repayment of AHP subsidy shall be made:

(A) *To the Bank.* If the Bank has not authorized re-use of the repaid AHP subsidy or has authorized re-use of the repaid subsidy but not retention of such repaid subsidy by the member or project sponsor pursuant to § 1291.8(f)(2) of this part, or has authorized retention and re-use of such repaid subsidy by the member or project sponsor pursuant to such section and the repaid subsidy is not re-used in accordance with the requirements of the Bank and such section; or

(B) *To the member or project sponsor.* To the member or project sponsor for reuse by such member or project sponsor, if the Bank has authorized retention and re-use of such subsidy by the member or project sponsor pursuant to § 1291.8(f)(2); and

(iv) The obligation to repay AHP subsidy to the Bank shall terminate after any foreclosure.

(8) *Retention agreements for rental projects.* The member shall ensure that an AHP-assisted rental project is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(i) The project's rental units, or applicable portion thereof, must remain occupied by and affordable for households with incomes at or below the levels committed to be served in the approved AHP application for the duration of the retention period;

(ii) The Bank or its designee is to be given notice of any sale or refinancing of the project occurring prior to the end of the retention period;

(iii) In the case of a sale or refinancing of the project prior to the end of the retention period, the full amount of the AHP subsidy received by the owner shall be repaid to the Bank, unless:

(A) The project continues to be subject to a deed restriction or other legally enforceable retention agreement

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or mechanism incorporating the income-eligibility and affordability restrictions committed to in the approved AHP application for the duration of the retention period; or

(B) If authorized by the Bank, in its discretion, the households are relocated, due to the exercise of eminent domain, or for expansion of housing or services, to another property that is made subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the approved AHP application for the remainder of the retention period; and

(iv) The income-eligibility and affordability restrictions applicable to the project shall terminate after any foreclosure.

(9) *Lending of AHP direct subsidies.* If a member or a project sponsor lends AHP direct subsidy to a project, any repayments of principal and payments of interest received by the member or the project sponsor must be paid forthwith to the Bank, unless the direct subsidy is being both lent and re-lent by a revolving loan fund pursuant to § 1291.5(c)(13) of this part.

(10) *Special provisions where members obtain AHP subsidized advances—(i) Repayment schedule.* The term of an AHP subsidized advance shall be no longer than the term of the member's loan to the project funded by the advance, and at least once in every 12-month period, the member shall be scheduled to make a principal repayment to the Bank equal to the amount scheduled to be repaid to the member on its loan to the project in that period.

(ii) *Prepayment fees.* Upon a prepayment of an AHP subsidized advance, the Bank shall charge a prepayment fee only to the extent the Bank suffers an economic loss from the prepayment.

(iii) *Treatment of loan prepayment by project.* If all or a portion of the loan or loans financed by an AHP subsidized advance are prepaid by the project to the member, the member may, at its option, either:

(A) Repay to the Bank that portion of the advance used to make the loan or loans to the project, and be subject to a fee imposed by the Bank sufficient to compensate the Bank for any eco-

nomic loss the Bank experiences in re-investing the repaid amount at a rate of return below the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the advance; or

(B) Continue to maintain the advance outstanding, subject to the Bank resetting the interest rate on that portion of the advance used to make the loan or loans to the project to a rate equal to the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the advance.

(b) *Agreements between Banks and project sponsors or owners.* A Bank shall have in place an agreement with each project sponsor or project owner, in which the project sponsor or project owner agrees to repay AHP subsidies directly to the Bank in accordance with the requirements of § 1291.8(b)(2)(ii) of this part (if applicable).

(c) *Application to existing AHP projects and units.* The requirements of section 10(j) of the Act (12 U.S.C. 1430(j)) and the provisions of this part, as amended, are incorporated into all agreements between Banks, members, project sponsors, and project owners receiving AHP subsidies under the competitive application program, and between Banks, members and unit owners under the homeownership set-aside program. To the extent the requirements of this part are amended from time to time, such agreements are deemed to incorporate the amendments to conform to any new requirements of this part. No amendment to this part shall affect the legality of actions taken prior to the effective date of such amendment.

§ 1291.10 Conflicts of interest.

(a) *Bank directors and employees.* (1) Each Bank's board of directors shall adopt a written policy providing that if a Bank director or employee, or such person's family member, has a financial interest in, or is a director, officer, or employee of an organization involved in, a project that is the subject of a pending or approved AHP application, the Bank director or employee shall not participate in or attempt to influence decisions by the Bank regarding the evaluation, approval, funding,

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monitoring, or any remedial process for such project.

(2) If a Bank director or employee, or such person's family member, has a financial interest in, or is a director, officer, or employee of an organization involved in, an AHP project such that he or she is subject to the requirements in paragraph (a)(1) of this section, such person shall not participate in or attempt to influence decisions by the Bank regarding the evaluation, approval, funding, monitoring, or any remedial process for such project.

(b) *Advisory Council members.* (1) Each Bank's board of directors shall adopt a written policy providing that if an Advisory Council member, or such person's family member, has a financial interest in, or is a director, officer, or employee of an organization involved in, a project that is the subject of a pending or approved AHP application, the Advisory Council member shall not participate in or attempt to influence decisions by the Bank regarding the approval for such project.

(2) If an Advisory Council member, or such person's family member, has a financial interest in, or is a director, officer, or employee of an organization involved in, an AHP project such that he or she is subject to the requirements in paragraph (b)(1) of this section, such person shall not participate in or attempt to influence decisions by the Bank regarding the approval for such project.

(c) *No delegation.* A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility to adopt the conflict of interest policies required by this section.

§ 1291.11 Temporary suspension of AHP contributions.

(a) *Request to FHFA.* If a Bank finds that the contributions required pursuant to § 1291.2(a) of this part are contributing to the financial instability of the Bank, the Bank may apply in writing to the FHFA for a temporary suspension of such contributions.

(b) *Director review.* (1) In determining the financial instability of a Bank, the Director shall consider such factors as:

- (i) Severely depressed Bank earnings;
- (ii) A substantial decline in Bank membership capital; and

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(iii) A substantial reduction in Bank advances outstanding.

(2) *Limitations on grounds for suspension.* The Director shall not suspend a Bank's annual AHP contributions if it determines that the Bank's reduction in earnings is due to:

- (i) A change in the terms of advances to members that is not justified by market conditions;
- (ii) Inordinate operating and administrative expenses; or
- (iii) Mismanagement.

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§ 1291.12 Affordable Housing Reserve Fund.

(a) *Deposits.* If a Bank fails to use or commit the full amount it is required to contribute to the Program in any year pursuant to § 1291.2(a) of this part, 90 percent of the unused or uncommitted amount shall be deposited by the Bank in an Affordable Housing Reserve Fund established and administered by the FHFA. The remaining 10 percent of the unused and uncommitted amount retained by the Bank should be fully used or committed by the Bank during the following year, and any remaining portion shall be deposited in the Affordable Housing Reserve Fund.

(b) *Use or commitment of funds.* Approval of applications for AHP subsidies from members sufficient to exhaust the amount a Bank is required to contribute pursuant to § 1291.2(a) of this part shall constitute use or commitment of funds. Amounts remaining unused or uncommitted at year-end are deemed to be used or committed if, in combination with AHP subsidies that have been returned to the Bank or decommitted from canceled projects, they are insufficient to fund:

(1) The next highest scoring AHP application in the Bank's final funding period of the year for its competitive application program;

(2) Pending applications for funds under the Bank's homeownership set-aside programs; and

(3) Project modifications approved by the Bank pursuant to the requirements of this part.

(c) *Carryover of insufficient amounts.* Such insufficient amounts as described in paragraph (b) of this section shall be

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carried over for use or commitment in the following year in the Bank's competitive application program or home-ownership set-aside programs.